

July 19, 2007



TRANSCRIPT

July 19, 2007

MONTGOMERY COUNTY COUNCIL

Councilmember Marilyn Praisner, President
Councilmember Phil Andrews
Councilmember Marc Elrich
Councilmember Nancy Floreen
Councilmember Duchy Trachtenberg

Councilmember Michael Knapp, Vice-President
Councilmember Roger Berliner
Councilmember Valerie Ervin
Councilmember George Leventhal



July 19, 2007

Council President Praisner,

I think we're going to begin. I know there are some traffic challenges, and some of my colleagues are running late as a result; but we do have a quorum, so I will begin. If we could rise for invocation. Monsignor Ralph Kuehner from St. Francis of Assisi Catholic Church in Derwood has been joined us this morning.

Monsignor Ralph Kuehner,

God of everlasting love, we ask your blessings today on the members of the Council of Montgomery County. They always remember that the work of justice is the work of our political leaders. Help all of us to realize that building a just, civil, and social order wherein each person receives what is his or her due is an essential task which each generation must take up anew. May the members of the Council have a special concern for the poor, the homeless, the victims of discrimination. Our prayer this morning is that the members of the County Council realize what must be done to promote true justice in our community for each and every person, and then have the courage to do what is necessary. May the loving God of us all be with you.

Council President Praisner,

Amen. Thank you very much. We're going to do a special presentation this morning; and I would ask Meredith Wellington and Wendy Perdue to join me up front. I know that there have already been recognitions by the Council as part of your retirement functions at the Park and Planning Commission; but I thought that after all your years of service, the least we could do is recognize you in public in front of our County television and also in front of the County Council. And especially because we're meeting on a Thursday; and I know your Thursdays are free right now, or at least less congested with meetings and readings than they used to be. I was hoping that you would be able to join us so we can formally and officially, in front of the audience and in front of the Council, thank you for your years of service on the Planning Board. And we did create some proclamations for that; and I'd like to read them. WHEREAS, Meredith K. Wellington has served two full terms dating from June 1999 on the Montgomery County Planning Board; and, WHEREAS, Meredith's tenure has seen both tremendous accomplishments and significant challenges, and in both cases the Planning Board and the public in general has benefited enormously from the experience, integrity, energy and determination that Ms. Wellington brought to bear on a wide range of situations; and, WHEREAS, she has shown unwavering dedication to transparent planning, accurate information, and public participation in the land use decision-making process; and, WHEREAS, Meredith Wellington is an individual with strong interests in preservation of open space and historic resources and in recreation, all opportunities for children, interest she displayed in her involvement before being on the Planning Board that has resulted in adding significant recreational facilities in the County; and, WHEREAS, Meredith Wellington has stood firm in her convictions to protect Montgomery County's parklands and streams; and WHEREAS, recreational athletes throughout Montgomery County will long owe thanks to her for protecting the County's ball fields, helping expand their availability, and making sure more users have access to those facilities; NOW, THEREFORE, be it resolved that the Montgomery County Council on behalf of a grateful County extends its best wishes to Meredith Wellington for her eight years serving on the Montgomery



July 19, 2007

County Planning Board and looks forward to working with her in the future. Presented on this 19th day of July in the year 2007.

Meredith Wellington,
(Meredith) Thank you.

Council President Praisner,
That's for you. Thank you. (Applause) Wendy. WHEREAS, Wendy Collins Perdue has served two full terms and one partial term, dating from March 1998, on the Montgomery County Planning Board; and, WHEREAS, Wendy's tenure has also seen both tremendous accomplishments and significant challenges, and in both cases the Planning Board and the public in general benefited enormously from the experience, integrity, energy, and determination that Ms. Perdue brought to bear on a wide range of situations; and, WHEREAS, Wendy Perdue has made outstanding contributions to our community as an associate dean and a professor of law at the Georgetown University Law Center, in private law practice, and on the Montgomery County Charter Review Commission; and, WHEREAS, as former co-chair of a community group involved in assisting with and monitoring the progress of downtown Silver Spring revitalization, she has brought a special passion to oversight of the planning and redevelopment of Silver Spring; and, WHEREAS, during Wendy Perdue's tenure, the Planning Board approved the Land Preservation Parks and Recreation Plan that strengthened support for environmental and natural resource protection and agricultural preservation to help balance the demands for a wide variety of recreational facilities to serve the County's growing population; and, WHEREAS, Wendy Perdue championed the use of measures to foster public transportation, to protect pedestrians, and to promote the most effective planning to improve traffic congestion, thereby lending a strong perspective in the development of projects of many magnitudes throughout the County; and, WHEREAS, Wendy Perdue's efforts at Park and Planning include her service as Vice-Chair of Planning Board; NOW, THEREFORE, be it resolved that the Montgomery County Council, on behalf of a grateful County, extends its best wishes to Wendy Collins Perdue for nine years serving on the Montgomery County Planning Board and looks forward to working with her in the future. Presented on this 19th day of July in the year 2007. Wendy, for you. (Applause) Thank you. Do you want to say something?

Meredith Wellington,
Well, yes, I would. I'd like to just say thank you very, very much. It was a wonderful ride. I really, really enjoyed my service. I really appreciated the opportunity that the County Council gave me to participate in our community. So thank you.

Council President Praisner,
Thank you. Wendy?

Wendy Purdue,
I'd just echo those comments. It has been a true privilege to serve at the Planning Board. I told my colleagues there I was privileged to have a nine-year weekly seminar with the unusual opportunity that at the end, the student -- that would be me -- voted



July 19, 2007

1 rather than the teacher. I don't allow that in my classes; but it was a real privilege. And I
2 want to thank the Planning Board -- thank the Council for giving me the opportunity to
3 serve.

4
5 Council President Praisner,

6 Well, thank you to both of you. Have we taken the pictures? No. We need to take a
7 picture. Want to show your proclamations?

8
9 Wendy Purdue,

10 Absolutely.

11
12 Council President Praisner,

13 Thank you both. We'll give you a rest before we ask you to help us again.

14
15 Councilmember Floreen,

16 You get at least a month off. We've got a lot of openings on boards and commissions.

17
18 Council President Praisner,

19 Thank you. Announcements, Agenda, and Calendar Changes, Madame Clerk?

20
21 Linda Lauer,

22 We have an addition to the Consent Calendar today, action on a resolution to appoint
23 members to the working group on Infrastructure Financing for County Government
24 Facilities. We received no petitions this week either. Thank you.

25
26 Council President Praisner,

27 Thank you. Minutes, Madame Clerk.

28
29 Council Clerk,

30 We have the minutes of July 3rd for approval.

31
32 Council President Praisner,

33 Is there a motion?

34
35 Councilmember Trachtenberg,

36 So moved.

37
38 Council President Praisner,

39 Councilmember Trachtenberg, is there a second?

40
41 Councilmember Leventhal,

42 Second.



July 19, 2007

1 Council President Praisner,

2 Councilmember Leventhal.

3 All in favor of approving the Minutes of July 3rd, please indicate. (Show of hands) That
4 is unanimous among those present. Thank you. We will now move to the Consent
5 Calendar. Is there a motion?

6
7 Councilmember Andrews, 22

8 So moved.

9
10 Council President Praisner,

11 Councilmember Andrews. Is there a second?

12
13 Councilmember Ervin,

14 Second.

15
16 Council President Praisner,

17 Councilmember Ervin. (Laughing) You guys make me nervous every once in a while.
18 Okay. Councilmember Floreen.

19
20 Councilmember Floreen,

21 Thank you, Madame President. I just wanted to comment on my pleasure that item "K"
22 was added to the Consent Calendar. Those are the appointments to the working group
23 on Infrastructure Financing for County Government Facilities. I think this is a
24 tremendous crowd of people with great background in highly technical matters. And I
25 look forward to their recommendations to us. And the timing is working out really well so
26 that we should have some recommendations from them when we go back to resolving
27 the details of the Growth Policy— at least I'm personally interested in looking at those
28 issues in context, and I hope we can take advantage of their thoughts as we look at our
29 challenge in financing. And, of course, the timing will also put us in a position to identify
30 any issues that we'd like to advance with the State as we hope to keep the challenges
31 of infrastructure financing on the table in competition with all the other State financing
32 issues. And let me just say, after having come back from the National Association of
33 Counties meeting where Mrs. Praisner was a significant force and Mr. Berliner and Mr.
34 Leventhal were there as well, there is going to be a national group looking at the
35 financing of infrastructure. Turns out, we're not alone -- always good to know. But the
36 fact is, getting roads, transit ,and other governmental facilities financed is a huge
37 national challenge. We'll see if we can all learn from each other in the coming months.
38 So I'm pleased that this is on its way, and I wish the group tremendous success. Thank
39 you.

40
41 Council President Praisner,

42 Thank you. Councilmember Andrews.

43
44 Councilmember Andrews,

45 Thank you, Madame President. I want to comment on item "F" which is the Public
46 Safety Committee report and recommendations on the Office of Legislative Oversight's



July 19, 2007

1 Report on A Base Budget Review of Fire and Rescue Service regarding net annual
2 work hours needed to cover a position 24/7. This is critical in establishing what the
3 proper number of staff are needed for overtime or to avoid structural overtime. And so
4 what the report found is that it takes roughly four and a half positions to cover a 24/7
5 position given annual leave, compensatory leave, sick leave, disability, training
6 requirements, light duty, things like that. That figure is approximately what the Fire and
7 Rescue Service was using for firefighters. It turns out that for paramedics, it's slightly
8 higher. So this will aid in the calculation of the Executive Branch's analysis of how many
9 staff we need in Fire and Rescue to avoid structural overtime. The recommendations of
10 the Public Safety Committee are on page 3 of the item. They are to ask the Executive to
11 justify future Fire and Rescue Service staffing plans based on net annual work hours
12 and shift relief calculations; to request the Executive Branch use the details of this in its
13 calculations for informing approving management within the Service; and asking the
14 Service to establish tracking systems to review and update it every three years. That's
15 the report of the Public Safety Committee. And I wanted to thank the Office of
16 Legislative Oversight and the Fire and Rescue Service for their good work in putting that
17 together.

18
19 Council President Praisner,
20 Councilmember Trachtenberg?

21
22 Councilmember Trachtenberg,
23 Thank you, President Praisner. I want to make just some brief remarks about the MFP
24 Committee report and recommendations on an OLO report linking MCPS workforce
25 data to our own decision-making here at the Council. Obviously, we endorse and
26 expand upon the recommendations that have been provided in the report. But in
27 particular, I want to note that we are asking that the Council, along with the County
28 Government and the Board of Education, submit a joint letter to the Council of
29 Governments requesting development of a project that would report total compensation
30 and trends among local school systems. Again, very important given the fact that half of
31 our budget that we approve is dedicated to the School System.

32
33 Council President Praisner,
34 Thank you. Council Vice President Knapp.

35
36 Council Vice President Knapp,
37 Thank you, Madame President. Just a couple of comments on a variety of items. First of
38 all, I commend everyone for their efforts on the Infrastructure Financing Workgroup. I
39 think that is a critical issue. We've all talked about it a lot. It's not new to us. The trends
40 that we're seeing throughout the country are that local governments are bearing more
41 and more of the cost, and the need for new and innovative ways to address this
42 continue to cry out to all of us. And so whether they be public, private partnerships,
43 other ways to do bonding -- a variety of things -- I look forward to this workgroup coming
44 back with some creative options for us to at least begin to explore so that we can then
45 figure out how to take the next steps. As it relates to the public school workforce data, to
46 Council decision-making -- obviously we continue to try and come up with better ways to



July 19, 2007

1 make budget decisions. And I think what have been laid out by OLO in this report are
2 good. And as Vice Chair of the Council of Governments, I've already requested that the
3 staff down there start to reach out to other local governments to see the best way to put
4 together a proposal so we can figure out what the cost would be and what we would
5 need to do to try and come up with a comprehensive approach to education total
6 compensation salaries. It's just something that hasn't been done, and apparently has
7 been resisted by a number of groups over the vast period of time. And so we're going to
8 try to figure out what we need to do to get that done. I think what we've asked for MCPS
9 is good, and I would encourage us to be very consistent in how we apply this across all
10 of County Government because I think one of the challenges we've run into as we do
11 budgets is we end up with apples and oranges comparisons. So it's difficult to look at all
12 of our different County Government -- County agencies' budgets -- and be able to make
13 the most effective decisions possible. So I continue to urge the MFP Committee to take
14 what is laid out here and really make sure we're applying that to all of County
15 Government. As it relates to the net annual work hour analysis of first responders, I
16 think that that was a very good report; and I was pleased to see that Fire and Rescue
17 was using the right numbers. The challenge we now have to do is to really go back and
18 look at the base and make sure that the number of people we have doing the job
19 broadly is the right number. I think what we've been adding on the margin to try and
20 make sure we've addressed going forward is the right number -- how that number was
21 calculated at the outset and make sure that what we've got really doing the job on the
22 ground right now is the right number I think is our next challenge. We've got plenty of
23 time to make sure that gets done before the next budget so we can really be able to
24 take that into consideration relative to our other priorities. So I thank the Chair's
25 leadership in that. And I think those are all the issues I wish to comment on, Madame
26 President. Thank you.

27
28 Council President Praisner,

29 All right. Thank you. I'd like to comment on a couple as well. First of all, I want to thank
30 Councilmember Floreen for her leadership on the Infrastructure Financing Workgroup. It
31 has been a little challenging finally getting confirmation from individuals. But I know
32 there were lots of folks who were interested in the Committee. Our goal in creating the
33 Committee was to try and look for fresh faces and individuals whose expertise really is
34 in financing so that we can -- and have a broad experience outside the County -- so we
35 can take advantage of that. Obviously, the work of the Committee is, as Councilmember
36 Floreen indicated, very important from the standpoint of not only exploring what the full
37 need may be for both maintaining and constructing infrastructure, but also what the
38 tools or opportunities may be available -- not just in this County but in other jurisdictions,
39 so that we might review possibilities in the future -- private/public partnerships and other
40 tools, whatever they may be. And also, to help engage the State in looking at this issue
41 in a comprehensive way. Councilmember Floreen also indicated that four of us were in
42 attendance in Richmond when the National Association of Counties just completed their
43 meetings -- began last Thursday and continued into Tuesday evening. And the big
44 message there, besides the challenges that we all face as counties, is a frustration with
45 and a need to have the federal government restore its partnership in working with us
46 collaboratively on the kinds of issues that we face on the ground day-to-day in a variety



July 19, 2007

1 of ways in trying to serve the residents of this country. So it was, I think, an outstanding
2 session with a lot of workshops and a lot of opportunity for networking among small,
3 large, rural, urban, suburban counties, elected commissioners, councilmembers,
4 supervisors, jurors, free elders – whatever you call them, they're county officials who are
5 working across this country on a variety of issues. I also want to note within the Consent
6 Calendar -- and really appreciate my colleagues' support on this issue of total
7 compensation. It, of course, does not stop at the School System. It's something that,
8 unfortunately, as I've tried to push it over the years has met with resistance both internal
9 to Montgomery County and external at COG. And I'm hoping that COG is the place to
10 do this. I'm hoping that this is just the beginning. And I'm very appreciative for the CAO's
11 support of this issue and of my colleagues and with Mr. Knapp well positioned to carry
12 that spear, so to speak. I'm hopeful that we – pitchfork, okay. I'm bringing it back out
13 tonight. I am -- -- that we will be successful on doing this on a cycle for key positions
14 across the region. And I think it will be helpful. And finally, I'd like to note that we are --
15 on "I" and "J" of this Consent Calendar -- confirming the appointment of Assistant CAOs:
16 Diane Schwartz Jones, who is no stranger to Montgomery County government having
17 served in the County Attorney's office in the past, and then Tom Street who is no
18 stranger to the County Council, having served leadership roles at WSSC before he left
19 there several years ago. These are the first two appointments in this structure where we
20 have made these non-merit positions. And I know the CAO is anxious for us to take this
21 action because there are rooms full of papers waiting for these people across the street.
22 Oh, Councilmember Andrews.

23
24 Councilmember Andrews,

25 Thank you, Madame President. I wanted to make one other comment, and that's about
26 item "C" which is the Receipt and Release of the Office of Legislative Oversight's report.
27 It's a study of Moderately Priced Dwelling Unit Program Implementation. It's a very
28 important report; very thorough; well done by Leslie Rubin and Aron Trombka of the
29 Office of Legislative Oversight, and basically makes the point that there's some
30 significant work that needs to be done in aligning the MPDU law with MPDU regulations
31 and MDPU administrative practices to make sure it's all working well together and not at
32 cross purposes. So there are a lot of detailed recommendations and findings that I can't
33 go into at this point, but I know the PHED Committee will next Monday when it takes it
34 up. But it's an important report and points to the need for some changes in the
35 implementation of the MPDU law to make sure that it works the way we all intend it to.

36
37 Council President Praisner,

38 Okay. There being no other lights, all in favor of approving the Consent Calendar,
39 please indicate. (Show of hands) That is unanimous. Nancy?

40
41 Councilmember Floreen,

42 Yeah.



July 19, 2007

Council President Praisner,

Thank you. We now move to item 4 which is confirmation of the County Executive's appointee for the Director of the Office of Consumer Protection, Mr. Eric Friedman. Is there any councilmember? Mr. Andrews.

Councilmember Andrews,

Yes. Thank you. The Public Safety Committee had the opportunity -- actually this Council had the opportunity to interview Mr. Friedman and enthusiastically is supporting his nomination by the Executive to this post. Mr. Friedman brings many, many years of dedicated experience in the office to this position. Just last night I was privileged to attend a forum across the street organized by the County Executive and Mr. Friedman's office to educate homeowners and prospective homeowners about how to avoid foreclosures and other problems with home loans. There's a lot of work that needs to be done there, as we are seeing. But Mr. Friedman has great expertise in the area of consumer protection. And I know that he will continue to do an excellent job in the position. The office has talented staff and a number of volunteers who are very dedicated as well that help Montgomery County consumers. Montgomery County has a long tradition of having a strong consumer protection focus, and that will continue under Mr. Friedman. And I'm very happy that the Public Safety Committee now has jurisdiction over consumer affairs and will work closely with Mr. Friedman to advance this over the next three and a half years.

Council President Praisner,

So I'll interpret that as a motion, Mr. Andrews? (Laughter)

Councilmember Andrews,

That is a motion.

Council President Praisner,

It's been moved by Councilmember Andrews and seconded by Vice President Knapp that the Council confirm the appointment of Eric Friedman as Director of the Office of Consumer Protection. I see no other lights, so all in favor of that motion? (Show of hands) That is unanimous. Congratulations, Eric. Are there any comments you would like to make?

Eric Friedman,

I just want to thank everyone for the confidence. I hope to hear from the Councilmembers with any issues they have regarding consumer protection.

Council President Praisner,

Thank you very much. You and I will be working on a program later this year to educate the public on their need to acquire, and the process for acquiring, set top boxes for any television they have that is analog. Because as of January 2009, no analog television will work unless it is connected to cable or through that system. So I look forward to working with you on that; we'll be sitting down shortly. Thank you. Congratulations.



July 19, 2007

(Applause) Okay. We will now move to Legislation Session, Day 23. Madame Clerk, is there a Legislative Journal?

Council Clerk,

Yes, you have the Journal of June 26th for approval.

Council President Praisner,
Is there a motion?

Councilmember Trachtenberg,
So moved.

Council President Praisner,
Councilmember Trachtenbeg, second by Vice President Knapp. All in favor of approving the Legislative Journal of June 26th, 2007, please indicate. (Show of hands) That is unanimous. Thank you all very much. We have one Bill for introduction -- Expedited Bill 18-07, Tenant Displacement - Sale of Mobile Home Park, Rights of First Refusal, sponsored by the Council President and Councilmember Knapp. Public Hearing for this is scheduled July 24th at 1:30 p.m. I just want to note for my colleagues that when we completed and when we were discussing and considering our work on the sale of rental properties and the right of first refusal, the issue came to us -- I believe from the Housing Opportunities Commission -- that mobile home parks were not included within our legislation. We do have at least one mobile home park in the County. And Councilmember Knapp and I conferred and decided we should cover that separately as the Committee -- PHED Committee -- had already determined that we should deal with this separately and not incorporate it within the previous legislation. And I hope we have made a concerted effort -- and will if we haven't -- to make sure that the owner and residents of that mobile home park are aware of the legislation. The hearing, again, is set for two weeks -- a week and a half, I guess -- on the 31st at 1:30. Vice President Knapp.

Council Vice President Knapp,
Thank you, Madame President. I just want to thank Kathleen Boucher for her efforts in pulling this off very quickly and bringing it back for the Council. There's a lot of moving parts, and I just thank you for taking the time to get it done.

Council President Praisner,
Good. Okay. That concludes the Legislative Session. We now move to Item No. 6, Resolution to approve Rollingwood Incorporation. Mr. Faden is in front of us. Mr. Faden, if you might first just share with councilmembers the action or choice of actions which the Council has before us at this point today.

Michael Faden,

Thank you, Madame President. You have in your packet two alternative resolutions. The resolution that was introduced on June 12th is to approve the holding of a referendum on this incorporation petition. We have modified that resolution -- it's on



July 19, 2007

Circles 1 and 2 of your packet -- to plug in a September 28th election date, which we have consulted with the staff of the Board of Elections on; and it seems to be agreeable to them. The other alternative, if you do not want to move this petition to referendum, is a resolution that is in the end of your packet on Circles 124 and 125, which basically gives three grounds for rejecting it and also takes care of the procedural details under the State law. If this action is taken, the law requires an opportunity for reconsideration and opportunity for another public hearing before that reconsideration. We have structured this resolution so that the Public Hearing will be held, if any resident requests it, by July 30th. In any case, a reconsideration vote would be required sometime this fall. There is no deadline on that.

Council President Praisner,
Clarify for me on that latter -- the reconsideration is a preference? It precedes the Public Hearing?

Michael Faden,
No, it would follow.

Council President Praisner,
So the request for a public hearing must be scheduled first before there is a motion for reconsideration?

Michael Faden,
Yes. The law is a little bit ambiguous here, although the sequence is clear. The law speaks of an opportunity for a public hearing. So that we drafted this resolution to say that -- it's the last paragraph on Circle 125 --

Council President Praisner,
Right.

Michael Faden,
-- to say that if any resident of the County files a request for a public hearing with you by July 30th, then you would schedule a public hearing. And after that public hearing, there would be a required reconsideration request. If no one -- I'm sorry, reconsideration resolution. If no one asks for a public hearing, reconsideration would still be on your agenda sometime this fall.

Council President Praisner,
Okay. And the reconsideration would precede any action other than the reconsideration. So the motion to reconsider the rejection -- which you would first vote on before you made any other action -- is that --

Michael Faden,
Well, no, it isn't even a motion. The State law is uniquely drafted. In fact, let me show it to you; I believe it's on --



July 19, 2007

Council President Praisner,

I just want folks to understand what are the specific actions since I don't think any councilmember here has gone through -- I know I haven't -- gone through, if that is the course that the Council takes, that step. So I want to make sure we understand.

Michael Faden,

Yeah. Actually, I think you did, with respect to Infringement Rights in 1991; but you would be the only one.

Council President Praisner,

Oh, that's right. Okay. I don't remember 1991. It was not a very good year, as I recall, for the County government. -- the situation, as far as the state of the State.

Michael Faden,

Right. Basically the State law says that if you approve this, only a single approval is needed; but if you reject it, then the law has a mandatory reconsideration with an opportunity for a public hearing before that reconsideration takes place.

Council President Praisner,

Okay. And so if there is a request, then the public hearing is scheduled; and then the reconsideration is a separate action.

Michael Faden,

Yes.

Council President Praisner,

Similar to the options we have in front of us today.

Michael Faden,

Yes, exactly. At that point you could approve it or reject again. You have both options.

Council President Praisner,

Okay. Councilmember Elrich?

Councilmember Elrich,

If there's a rejection and a reconsideration, it comes back in exactly the same form?

Michael Faden,

That's right. It's the same petition. It does not change.

Councilmember Elrich,

And so any change, just to be clear, would require a full -- the full restart of the process: the definition of boundaries and signatures within those boundaries.



July 19, 2007

1 Michael Faden,

2 That's correct. The only caveat I'd put on that is if this process lasted long enough, and
3 there was some change in the State law intervening; but I think that's pretty unlikely.
4

5
6 Councilmember Elrich,

7 That would deal with one of the two issues. That would deal with the tax issue; it
8 wouldn't deal with the boundary issue.
9

10 Michael Faden,

11 It could deal with either, actually. If the State law were amended to say that the Council
12 could change the boundaries of a submitted petition, for example, while this petition
13 were still before it; but I think that's exceedingly unlikely.
14

15 Councilmember Elrich,

16 Hmm. But possible.
17

18 Michael Faden,

19 But possible.
20

21 Councilmember Elrich,

22 We would have to request –
23

24 Michael Faden,

25 Right.
26

27 Council President Praisner,

28 Okay, any other -- I'm sorry, Marc. Are there any other questions folks have about what
29 we're doing in the process? Because I think it's very important that folks are clear about
30 the choices in front of the Council today and what happens after that. To reiterate, the
31 Council staff has prepared alternative resolutions for the Council. Should the Council
32 accept the incorporation petition, the next steps would be -- Mr. Faden?
33

34 Michael Faden,

35 An election to be held on September 28th –
36

37 Council President Praisner,

38 By the community to vote Yes or No.
39

40 Michael Faden,

41 Right, election of the voters within the proposed municipality.
42

43 Council President Praisner,

44 Right. If the Council chooses "No," then the request coming from anyone to reconsider
45 would trigger that process as laid out by Mr. Faden.
46



July 19, 2007

1 Michael Faden,

2 Actually, the request would be for a hearing.

4 Council President Praisner,

5 Right, I'm sorry.

7 Michael Faden,

8 The reconsideration happens whether anyone requests or not.

10 Council President Praisner,

11 So those are the choices in front of the Council. Are there any motions? If not, I would
12 move the Resolution on Circle 124 and 125. Having had the Public Hearing and had the
13 discussion -- and I thought it was an excellent Public Hearing with a significant
14 opportunity for the public to comment and for us to hear the diverse views of community
15 concerns. My perspective is that there are numbers within the community -- that there is
16 a question about the boundaries, from my perspective, that have been drawn. I think
17 folks from certain sections have raised legitimate questions about that. But even more
18 important to me, I think there are broad County interests that the Council must consider
19 in this process that have been raised in a significant way that are highlighted in the
20 Resolution -- but not only those items within the Resolution -- that for me, lead me to
21 conclude that the Council should reject this request. So I move that resolution. And did I
22 hear a second?

24 Council Vice President Knapp,

25 Second.

27 Council President Praisner,

28 Vice President Knapp. Discussion? Councilmember Elrich.

30 Councilmember Elrich,

31 This is probably the first really unpleasant vote that I have to cast. I thought when this
32 petition came in front of me originally that I would be a sponsor of the petition. And I'm a
33 strong supporter of municipal government, and was prepared to support the
34 incorporation here. I do believe that the more local the government, that there are
35 advantages that the citizens derive from that. And it's probably for that reason that in the
36 resolution we're approving, 2(a) is the one I actually disagree with. I don't know that you
37 need to establish there's a critical need for a new layer. I think that it's legitimate for
38 people to want local and responsive government, even if there's not a critical need for
39 this layer of government. And I don't think it's for us, in some ways, to decide that. I
40 think that's something that the community can decide. But I think the other two points
41 are persuasive to me. And the boundary issue, I think, is very clear. I think that the case
42 was not made that at least two of the areas within Rollingwood are not part of the
43 integral community; and, in fact, they will lose their democratic rights -- because they're
44 smaller than the core area, particularly Pinehurst, their votes are essentially
45 meaningless. And the logic was by the incorporators that they were doing Pinehurst a
46 favor; but I didn't get a sense from listening to people from Pinehurst that they felt



July 19, 2007

1 anybody was doing them a favor. And it seems to me that if Pinehurst wanted to remain
2 an island, Pinehurst had a right to remain an island surrounded by municipalities; and it
3 wasn't for the incorporators of Rollingwood to decide that they were going to spare
4 Pinehurst the island situation. So I think it's seriously flawed there, and I think there are
5 serious questions regarding the Dunlop Hills area and the new Rollingwood area --
6 going back to the very history of how those neighborhoods were created different than
7 old Rollingwood. The tax issue is also, I think, fundamentally important. It's not the
8 million dollars that bothers me. And I want to say this as clearly as I can. A million
9 dollars spent by local government that offsets a million dollars spent by a County
10 government is a wash to me. It's a loss of revenue, but it's also a loss of liabilities. So I
11 don't bemoan the loss of the money if it relieves the County of a million dollars in
12 liabilities. But that doesn't seem to be the case here. And, again, the incorporators point
13 to the language in the budget and cite that, well, maybe we really didn't mean that we
14 were going to do a rebate. But then I look at the testimony -- I think from Mr. Hower or
15 Houser, one of the proponents of -- Moskov -- that he handed us in the last thing. And in
16 one of the sentences he says, "Our evaluation is that Rollingwood residents would pay
17 lesser taxes and fees." Well, if you're not adding any additional taxes and the only taxes
18 you're paying are the County property tax and the County income tax, the only way you
19 could pay less is if some of what you paid came back to you. There's no other way to
20 pay less because you're paying the same as everybody else. You pay the same
21 property tax; you pay the same income tax. And if you wind up having to have less of a
22 tax burden, that means one of those two things went back to the residents. And that sits
23 in bold print as one of the conclusions that Mr. Moskov reached. And I find that
24 troubling. And so it's not that the money is going to be used for reimbursement for
25 services that the County would provide. There is this lurking possibility of the money
26 being used for rebates. And that is not -- as a nineteen-year municipal official myself --
27 the purpose of that money; and it never has been. The municipalities fought very hard
28 for a larger State income tax share. And I think we're still fighting to increase the income
29 tax share because we recognize you can't pay for municipal services -- at least not in
30 every other municipality in Montgomery County -- just out of property taxes, any more
31 than the County government pays for all its services out of property taxes. So
32 municipalities had a very strong interest in getting the income tax rebate. But the
33 income tax rebate was to pay for services. It was never envisioned, in any municipality
34 I've ever worked with, as something that could possibly go into a tax rebate. And that's
35 probably the most troubling aspect of this. And I wouldn't have noticed it -- I don't think
36 any of us would have noticed it had not there been a closer look in the budget and had
37 not the incorporators actually put reference to that in their budget. And that leads me to
38 my last fear, which is that other areas will look at this because, as our attorneys have
39 said, a municipality need provide no services whatsoever and that a rebate is a perfectly
40 legal thing to do with the money. And to me, it's perfectly possible that other jurisdictions
41 or other parts of the County, now that they're aware of this, may well say, "Why not do
42 this?" And to me, that would be opening the door to something that would be a disaster
43 for the County. So my view is, I'll support the current legislation. I'm more than happy to
44 work with the state delegation to get changes to the rebate formula of the income taxes
45 so that it's a clear link between the return of income taxes and provision of services so
46 this is not a possibility. And I'd be happy to see a petition come back with that



July 19, 2007

1 addressed and with the boundaries of Rollingwood being Rollingwood proper, and not
2 including Dunlop Hills and the Pinehurst area. And that petition I could support if the
3 state law is changed regarding taxation; but this petition, and under the current State
4 law, I can't support it.

5
6 Council President Praisner,
7 Councilmember Floreen.

8
9 Councilmember Floreen,

10 Thank you, Madame President. Well, I've been really sympathetic to the movers of this
11 initiative. Both of us, I guess because of our municipal experience and in sympathy --
12 one of my -- I know you've all been wondering; my park pin, this is a porcupine. This is
13 in keeping with their "Don't tread on me" philosophy. And it's in keeping with their
14 rationale for incorporating 109 years ago. That was in opposition to indoor plumbing. I
15 was ahead of the ball. Well, you know, 109 years ago it was a new thing. They viewed it
16 as a health issue. They weren't so certain about its reliability. They've gotten over that
17 recently.

18
19 Council President Praisner,
20 They flushed it away so to say. (Laughter)

21
22 Councilmember Floreen,

23 But there wasn't felt to be a compelling interest at that point in time to create a structure
24 that could deal with it. Turns out the town of Somerset was incorporated years ago
25 because of issues about sewage disposal, the need for a mechanism to generate
26 revenue to support a system. We did a little more research, and the town of Chevy
27 Chase history is a good one. And they point out that Chevy Chase and Sections 2, 3, 4
28 and Martin's Addition were incorporated at the turn of the century at a time when this
29 was a rural County with rural objectives. And that was the interest of the County
30 Commissioner -- what would they call it? -- yeah, a Board of County Commissioners at
31 that point with a focus on an agricultural environment. Things have changed over time.
32 But back then, if you were going to deliver services that were attentive to a more urban
33 populated environment, there needed to be a governmental structure that responded to
34 it. So I am -- I've been very sympathetic to the group that moved this because of what I
35 find is a very compelling plea for a sense of identity and a sense of community. But I
36 have to say, after further consideration of all these issues and evaluating the history and
37 our staff's really good piece of work here, I'm just persuaded that this is not the way to
38 go. And I would disagree with my friend with respect to the rationale. I'm not moved by
39 the money issue; it's not a lot of dollars. But the real question is, "What is the moving
40 force that justifies this?" We have indoor plumbing. Now it's pretty much the rule, except
41 for where we have our debates about sand mounds and the like and how we -- sewage
42 disposal continues to be a driving issue throughout the County. It's still endured though;
43 you can get into that system from your home. But the fact of the matter is, I think that
44 there should be a more driving need for a local level of government than what has been
45 demonstrated here. I asked the question at the Public Hearing, "What is the problem
46 that we're solving?" And there are genuine concerns about how we get recognized, how



July 19, 2007

1 we have a seat at the table. I think that is the real issue for the Rollingwood community.
2 And I think that there are ways that we can help that objective be achieved that does not
3 require an additional level of government with real significant community burdens and
4 expectations that that truly does require – you don't just hire someone as a town
5 administrator to run a town. Residents have to supervise it, and it's a long-term
6 commitment. And then when the folks who are doing it get tired, they have to recruit
7 replacements. It is an institution that has to be respected, that has to be managed; and
8 a fair amount of attention needs to be paid to the details of municipal government. So I
9 think you need to have a significant objective there to provide some service, some --
10 achieve some result that cannot currently be achieved under the current rules. And I just
11 don't see that here. And I would also agree that the issue with the Pinehurst community
12 and possibly Dunlop Hills – we didn't get a clear sense of the math -- also puts into
13 question the community commitment to this across the range of different subdivisions
14 within Rollingwood. So I applaud the community spirit here. I think there's nothing like a
15 good community debate to bring people together. I hope that the Rollingwood
16 community will plan a big party to set up an organization that will help with
17 communication on issues that will bring people together, that will set up a social
18 structure perhaps, and an advocacy structure that will suit them in the long term. In
19 Garrett Park, the town just maintains the roads and its facilities and reviews a few
20 building permits; but it does not create the community activities that I heard desired so
21 much by Rollingwood residents. That's done by a civic association. That's done by other
22 volunteer organizations that frankly have no relationship to the town organization. And I
23 think Mrs. Praisner pointed out that this was a community standard that was achieved in
24 other parts of the County as well; we all know that. And I think that that result can be
25 achieved within Rollingwood by measures that are less than incorporation. So I
26 sympathize with the organizers. I think they've really done a terrific job of making their
27 case. But for me, the issue of what is the problem that they're solving that can't already
28 be solved through other means is the tipping point for me. So it's been an interesting
29 conversation; we may well continue it. But that's -- I just remain unpersuaded that this is
30 a unique situation that cannot be addressed through other means. So thanks for your
31 hard work on all of this.

32
33 Council President Praisner,
34 Vice President Knapp.

35
36 Council Vice President Knapp,
37 Thank you, Madame President. I don't really have a dog in this fight, per se – and
38 obviously it's before the Council, so we'll all vote. One of the challenges -- one of the
39 reasons I felt compelled to speak, is in one of the larger communities I represent,
40 Germantown, this has been part an ongoing debate for the better part of the last 25
41 years. And it's a healthy discussion, a healthy discourse. And so I -- I've continued to
42 struggle with the community; and I've long told everyone in Germantown that if they --
43 and I think there are reasons to foresee to seek incorporation at the right time. But to
44 what Ms. Floreen just raised, the notion of, "What's the problem we're trying to solve?"
45 continues to be kind of at the crux of the matter. And it's very difficult, I think, for that
46 community to identify what it is; and as a result, I don't think any efforts have really gone



July 19, 2007

1 forward. And I thought that the Public Hearing last week was an excellent Public
2 Hearing. I was a little disappointed, I couldn't stay for all of it; but I watched much of it on
3 TV afterwards. There were a number of great questions asked by the Council; and I
4 think the community was very fervent and active in their response, both either for or
5 against. And I guess I came away, similarly to Ms. Floreen, in that I wasn't persuaded
6 that there was a compelling issue there that being incorporated would resolve. And I'm
7 struck because this a debate that we've had in the Upcounty, because we look just to
8 the south a little ways and we have the community of Montgomery Village -- which is not
9 a municipality, but is unique in its structure as it relates to having a series of HOAs. But
10 it addresses many of the issues that I think that I heard articulated by many of the
11 residents in the Rollingwood community as it rates to sense of place, services, activities,
12 bringing community together. And they do a fabulous job without having anything that
13 looks like a municipality. And so I think there are ways to get there from here without the
14 element of municipality. The one issue -- and I think Mr. Leventhal raised this a number
15 of times in his questions -- that we as a Council and County need to look at is the
16 effectiveness of the delivery of services. I think we have this in many of our communities
17 -- both in being able to define the right level of expectation on the part of our community,
18 and also the right level of expectation of the delivery of those services and the quality of
19 those services on the part of the County. I think that there are times when we tend say,
20 "Well, what you're getting is the same as everybody else; and, therefore, that should be
21 sufficient." I'm not of that mind set. I think we should continue to be striving to excel in all
22 of the services that we provide. And we shouldn't necessarily dumb things down to
23 make sure that everyone has the least common denominator. And if people raise
24 questions as to the quality or the frequency in which services are delivered, that's a
25 topic that we should, as County government, continue to pursue to say, "Are we doing it
26 as well as we possibly can?" And I think that question and the questions that the
27 community raised are significant. And we should continue to look at ways to -- if there
28 are deficiencies, if there are inadequacies there, that we should look to provide services
29 better -- not just for Rollingwood, but across our entire County -- to make sure we're
30 doing that as well as we possibly can. So I think that's something that we need to
31 continue to pursue and look at. But I think generally from what I heard, the issues that
32 the community raised, they are very strongly impassioned about; and I think that's
33 important. But I didn't find a compelling reason that incorporation was the way to solve
34 that problem in the absence of taking the steps to address many of those issues in other
35 ways. And if having tried a number of different mechanisms, and those were successful
36 -- or that those were creating a critical mass -- and that that community that had now
37 come together thought that municipality was the next logical step in order to achieve the
38 next set of goals the community has laid out for itself, I think then we could have a very
39 different conversation; but I'm not sure we're at that point yet. And so I appreciate
40 everyone's efforts. I appreciate the commitment on the part of the people who brought
41 the petition forward. But I don't think that what's before us today is the appropriate
42 course of action at this time.

43
44 Council President Praisner,
45 Councilmember Andrews.
46



July 19, 2007

Councilmember Andrews,

Thank you. Well, I did also think it was a very good Public Hearing last week. There were a lot of passionate arguments made and a lot of different arguments made. I agree, as well, that I didn't hear a compelling argument for municipalization of Rollingwood. And I also wasn't persuaded that it was also in the overall public interest. I was concerned especially that some residents of the area felt that they weren't going to be heard by the County unless they were incorporated; they wouldn't be as effective unless they were incorporated. And I want to assure people in the room and others who may be listening that whether one is in a municipality or not, you're going to get the same attention from my office, and I believe from all of my colleagues, if you bring an issue to the Council. I don't want people to feel like they need to be part of a municipality in order to get responsive service from the County. And if there are any issues, whether it's responsiveness of police services or public works, I invite residents to contact my office as well; and I will do what I can to help, particularly in the area of public safety where I chair the Committee. So I was not persuaded, and I'm going to support the motion.

Council President Praisner,
Councilmember Leventhal.

Councilmember Leventhal,

Thank you, Madame President. I care a lot about local government. It was very difficult getting here on the County Council. It's an enormous effort, and all of us who are here went through the effort because we believe so strongly in the importance of local government. So I think it's nice that the supporters of incorporation share our view that local government really matters to peoples' daily lives and that local government holds the potential to affect, positively or negatively, individual families' quality of life. I really appreciate that about the Rollingwood incorporation movement. I asked a lot of questions at the Public Hearing, and it was an opportunity for me to engage with residents in a conversation. And I know that from those who support this petition, there really is yearning to see it come about. And I know that in the course of my questions and just sort of having a conversation, some comments were made that made the residents of Rollingwood who support incorporation disappointed and frustrated that I didn't seem to be persuaded. It is important, I think, to think through the principles here, and that was the effort that I was trying to engage in at the Public Hearing. And the principles really are significant. And as Vice President Knapp has said, I think many, many good things have come from this discussion. We do need to concentrate on effective delivery of services. We do need to concentrate as a County on customer satisfaction. I know that I, I know Mr. Berliner, and I know all of my colleagues are spending an awful lot of time right now thinking about how can we improve services to Rollingwood? So that's a very positive outcome of this conversation. And we're thinking hard about economies of scale and effective delivery and what is the right size and scope of a governmental unit. And so this has been an enormously instructive and helpful conversation for us up here who oversee the delivery of services by this large and well-managed County. I have to say, I do generally agree. I see it's necessary in State law that we, as a County Council, if we do not accept this petition articulate why.



July 19, 2007

1 And so I appreciate that our staff has addressed three issues in the resolution that are
2 concise and clear and that I think are appropriate and that I do agree with. I do have to
3 say that I was concerned at the Public Hearing and I expressed my concern and I
4 remain concerned that the proponents of incorporation are stating benefits that will flow
5 from incorporation that I do not, in fact, think are valid. And that, more than anything
6 else, is what causes me to vote not to allow this referendum to take place. Because I
7 truly believe that if this matter becomes a campaign, that there will continually be claims
8 made to undecided voters that will suggest benefits that will flow as a result of
9 incorporation that I just don't believe will flow. And I'm sorry to engage in a debate with
10 my constituents. I respect my constituents. I've heard since the Public Hearing from
11 several Rollingwood residents with issues having to do with street maintenance and
12 police crime reporting. And Mr. Berliner's office has done an excellent, very responsive
13 job. I think he's setting up a full-time Rollingwood unit in his office. And my office has
14 been in close communication with him. And so I want to make sure that my constituents
15 in Rollingwood -- the District Councilmember tends to take the primary responsible here.
16 But I want to make sure that -- and I know my at-large colleagues agree with me -- that
17 my constituents in Rollingwood know they can call me, and I will be responsive. And I
18 know Mr. Berliner will and has been extraordinarily responsive. I have to cite as an
19 example even now on Circle 12 -- in my communication with Rollingwood residents, this
20 issue has come up. And it is in the chartered document that -- on Circle 12 -- the
21 benefits that will come from incorporation include, and then down at the very end,
22 "Community communication services, including an up-to-date e-mail service list of
23 Rollingwood village residents." I've had an exchange with my constituents in
24 Rollingwood that suggests that there is this belief that from incorporation automatically
25 the Village is entitled to the e-mail address of every resident in the municipality. I can't
26 imagine how that would be assembled. Montgomery County does not have the e-mail
27 address of every resident of Montgomery County. Councilmember Leventhal doesn't
28 have the e-mail address of every one of my constituents. I've painstakingly, over many
29 years, assembled my own list of e-mail addresses that I use to communicate with my
30 constituents; and I'd be delighted to have Rollingwood residents join that e-mail list. If
31 the new Village of Rollingwood were to pass a law compelling residents to provide their
32 e-mail addresses, I suspect many residents would not like to comply. I get crime reports
33 from my Tacoma Park City Councilwoman. It's a benefit. I mean, I like my Tacoma Park
34 City Councilwoman a lot, and we're in communication. She does a great job. I don't
35 always read them. I'm not sure that I would always want to get them. I know that I send
36 messages to my constituents over the e-mail that sometimes they're welcome,
37 sometimes they're not. So this is an example of my other concern. Once the Village is
38 incorporated, it may pass laws believing that this is the right way to go -- that these are
39 benefits that are universally desired -- that, in fact, may not be so desired. I suppose --
40 we'd have to check the constitutionality of this -- I suppose the Village could compel
41 every resident to give it his or her e-mail address; but I don't know that that would be
42 good policy or that every resident would want to comply. And that's my last concern,
43 that the Village may pass laws that are not in the interest of some of its residents who
44 may not support incorporation in the first place but, furthermore, not really in the interest
45 of Montgomery County. And that gets to my concern about Brookeville Road. I have no
46 idea what the new Village would do to change traffic patterns or to prevent cut-through



July 19, 2007

1 traffic on Brookville Road, but I know that Brookeville Road is a major thoroughfare that
2 connects Silver Spring to Chevy Chase. As the bird flies, it makes a lot more sense to
3 drive from Rock Creek Park from East West Highway to Chevy Chase Circle on
4 Brookville Road than it does to go all the way up to Connecticut Avenue and turn left
5 and go down. And frankly, in the interest of mobility in the neighborhood that's fairly
6 close to where I live, I don't think it's in the broad public interest that a new village
7 impose substantial new restrictions – not for safety, but for mobility on that road. And
8 that and other issues cause me concern. I think if we turn over jurisdiction of streets that
9 are important streets for all residents of Montgomery County to the Village, that the
10 Village may take actions that the Village interprets as in its own interest that are not in
11 the interest of Montgomery County. I want to continue to be responsive to my
12 constituents in Rollingwood. I certainly appreciate the conversation, and I certainly will
13 do all I can to see that services continue to be delivered effectively and efficiently in that
14 part of Montgomery County, which I'm proud to represent.

15
16 Council President Praisner,

17 Thank you. There are no further lights. Councilmember Berliner's light just went on.

18
19 Councilmember Berliner,

20 Thank you, Madame President. As I think all my colleagues fully appreciate, there's
21 probably nothing more delicate for a District Councilmember than an issue of this
22 nature. So I ask your indulgence while I share with the people of Rollingwood my
23 thinking with respect to this matter. Let me start by saying that I recognize how strongly
24 the residents of Rollingwood feel about this request to incorporate. It is obvious to me
25 that the individuals on both sides of this issue have thought long and hard about their
26 positions, and articulated them intelligently and with conviction. I have great respect for
27 members of the Organizing Committee, like Martha Jones, and respect the enormous
28 amount of time and effort they have put in following the statutory process. Sitting amidst
29 other historic small municipal governments who provide additional services and who
30 are, by definition, more responsive to their neighborhood's desires, they truly believe
31 municipalization would be best for their neighborhood too. They have operated in good
32 faith, even going beyond what was required of them, in an effort to address certain
33 concerns of the opposition; for that, I commend them. In the same vein, I respect the
34 well-researched, thorough analysis of those who oppose the incorporation. I believe
35 they, too, have been operating in good faith. Anyone who attended the Public Hearing
36 on July 10th could see how strongly this issue has divided this community. This has
37 been a difficult issue for the Rollingwood community to reconcile, and it has been a
38 difficult issue for me as well. As the member of this Council that represents
39 Rollingwood, I have a special responsibility to this community. My staff and I have met
40 on numerous occasions with representatives from the Rollingwood Organizing
41 Committee and the Rollingwood Advocacy Group, as well as individuals who oppose
42 the incorporation. In all instances, I did my best to listen with an open mind and engage
43 in a fair, honest dialogue. My ultimate decision on this matter is not one that I have
44 taken lightly. In decisions of this nature, decisions involving unprecedented proposals,
45 arguably the most aspect of the process is identifying the core principles by which my
46 colleagues and I assess the merits. What standard does the proposal have to meet?



July 19, 2007

1 For myself, I have concluded that the analysis and advice provided to the County over a
2 decade ago on this very issue was sound then and sound today. In 1997, the Office of
3 Legislative Oversight released Report 97-1, a Study of Service Structures in the Central
4 Business Districts and Other Urban Areas. This report recommended that the County
5 limit approval of new municipal incorporations to those circumstances where there is "a
6 demonstrated, compelling need for local control over code enforcement, the exercise of
7 annexation powers, or other powers unique to a municipality." I believe this standard of
8 demonstrated, compelling need is the appropriate benchmark for assessing
9 municipalization proposals under current law. After listening to the arguments advanced
10 on behalf of incorporation, I have concluded, as I believe an overwhelming majority if
11 not a unanimous Council has concluded, that this proposal for incorporation does not
12 meet that test. Given my responsibility to this community, I will share in some detail why
13 I reach this conclusion. I do so not because I harbor any illusion that I will convince the
14 proponents of my point of view, but rather to show respect for their years of effort; to
15 demonstrate that they have been heard, if not agreed with; and to perhaps lay the
16 foundation for a path forward. Let me first address the issue of whether this Council's
17 action today is a vote against democratic principles. It has been argued that the people
18 of Rollingwood, and not this Council, should determine the fate of incorporation; such a
19 vote, it is argued, is the only democratic solution. I do not share that point of view. I do
20 not share that point of view because I do not believe that the County is neutral with
21 respect to this matter. If the County is negatively impacted by incorporation under these
22 terms, which I believe to be the case, then I do not believe that I perform my duty by
23 allowing the people of Rollingwood to decide whether that harm should be inflicted. It
24 may well be that the people of Rollingwood would decide by a majority vote that
25 incorporation is in Rollingwood's interest. That does not make it in the interest of the
26 County. And nothing in our democracy or our State statute requires this Council to
27 surrender its responsibility to protect the larger public interest to the people of
28 Rollingwood. Nor do I believe that our action is inconsistent with the State statute. In the
29 most recent communication from the official Organizing Committee, it was repeatedly
30 implied that a vote against incorporation would be an abuse of our discretion under the
31 statute, an abuse that would be challenged in court. I do not share that perspective
32 either. As a lawyer and someone who has specialized in the drafting of legislation, my
33 own view is that the statute contemplates that this Council retains its full discretion to
34 act in what it deems to be the best interest of the County as a whole. This is also the
35 view of the Council's lawyers. It is neither arbitrary nor unreasonable for this Council to
36 conclude that this unprecedented incorporation proposal is not in the best interests of
37 the County. Under the current statute if this unprecedented proposal went forward, the
38 rest of the County would subsidize this incorporation to the tune of \$1 million annually. It
39 has been argued that \$1 million isn't a lot of money. In absolute terms, \$1 million out of
40 \$4 billion isn't that much. Yet my colleagues know how hard we struggle to find a
41 quarter of that amount to allow a Crisis Hotline to operate 24 hours a day. We spend
42 about that amount to provide meals to our needy seniors. And a million dollars will put
43 17 more police on the streets. These are the real trade-offs that this proposal poses.
44 Moreover, while I understand the desire on the part of the Organizing Committee and
45 incorporation supporters for the quality of services that their immediate neighbors have,
46 I do not believe that the rest of the County should subsidize that objective. Nor do I



July 19, 2007

1 believe it is necessary for there to be subsidization in order to achieve those objectives.
2 The same OLO report that articulated the compelling-need test for incorporation argued
3 on behalf of allowing communities, such as Rollingwood, the right to form special taxing
4 districts under which additional services could be provided and funded. If, after the vote
5 today, the people of Rollingwood care to pursue that option, I pledge my support to do
6 so in a manner similar to the incorporation process – one that would allow for a vote of
7 the community to determine whether they want to impose an additional tax burden on
8 themselves for specified enhanced services. I am also concerned about the precedent-
9 setting nature of this proposal were it to be adopted. The Organizing Committee argues
10 forcefully that the Council should not be concerned with setting a precedent here
11 because there are no further municipalizations on the horizon, to the best of their
12 knowledge; that further municipalization is a mere hypothetical possibility; and that
13 hypothetical possibilities are not a reasonable basis to reject the very real proposition
14 before us. Again, I respectfully disagree. All other municipalities in the County were
15 originally special taxing districts prior to becoming incorporated. These special taxing
16 districts had to find boundaries, a government framework, and a revenue-sharing
17 agreement with the County prior to becoming incorporated. Since the ratification of the
18 Home Rule Amendment in 1954, there have been six referenda held for areas to
19 become municipal incorporations, all within Montgomery County, all within my district.
20 Five of Rollingwood's neighbors were successful: Chevy Chase Section 3 in 1982,
21 Section 5 in 1982, Martin's Addition in 1985, Chevy Chase View in 1993, and North
22 Chevy Chase in 1996. But again, every one of those communities was a special taxing
23 district created prior to 1924 and was already receiving the same transfer of County
24 income tax revenue as a municipality. As a result, the diversion of County funds was not
25 even a consideration in those cases. This is not true with the proposal before us. And I
26 believe this Council should properly be concerned about the precedent-setting nature of
27 this proposal. It is precisely for that reason that I believe that the compelling-need test is
28 an appropriate test now and in the future. One of the Organizing Committee's
29 fundamental arguments has been that a municipalization would give Rollingwood
30 enhanced power and profile in relationship with the County and State officials. They
31 would, in their words, "have a seat at the table" that they do not have today. They have
32 then pointed to incidences in which the community's concerns regarding public safety
33 and street repairs, among other things, were not addressed to their satisfaction – issues
34 they argue would have been better addressed if they were incorporated. I have heard
35 them speak of these issues with such conviction that I know there must be a basis for
36 this belief. However, while I cannot speak as to whether municipalization would grant
37 meaningful power, vis-à-vis the State, I must say to those who hold this belief that with
38 respect to matters at the County level, it is not consistent with my own experience or the
39 experience of my more experienced colleagues. The weight of Rollingwood
40 community's views or its needs is not diminished by virtue of the fact that you are not an
41 incorporated entity, and my office will fight on your behalf whenever called upon. Let me
42 cite one example. I was dismayed to hear the community refer repeatedly to the
43 difficulty of getting information from the police regarding instances of crime in the
44 Rollingwood community. In response to those concerns, I met personally with the police
45 chief. To his credit, Chief Manger also expressed both disappointment and perplexity as
46 to why members of his organization had failed to be responsive to the desire for



July 19, 2007

1 information. He committed to being responsive; and I have a memorandum from his
2 office setting forth procedures that ensure that the community will obtain timely and
3 complete information. He also committed to meeting directly with the Rollingwood
4 community should Rollingwood wish to engage in further dialogue. Finally, proponents
5 of incorporation have spoken of their heartfelt desire for greater community. I
6 understand and share that desire; however, I would observe that the response of the
7 community to this proposal and the strong disagreement over its boundaries as well as
8 its purpose, suggest that there may be other less-divisive ways to achieve community
9 than through the creation of a formal governing structure. And to the extent to which my
10 office can assist in looking for alternative ways in which your sense of community can
11 be deepened, we would be pleased and honored to work with you in pursuit of that
12 worthy objective. In our County government, District Representatives such as myself
13 must constantly weigh what is good for our neighborhoods with the needs of the greater
14 community. As this statement seeks to make clear, I have reluctantly concluded that
15 advancing the interests of Rollingwood in the manner sought would be in conflict with
16 the needs of our larger community; and as a result, I cannot support it. I can, however,
17 support working with the community on alternative approaches that would address
18 most, if not all, of the underlying objectives articulated by supporters of incorporation.
19 And I can pledge to you, as I pledge to all the people of District 1, that my excellent staff
20 and I will be your advocate with our County government and work to ensure that you
21 have the quality of services and the responsiveness that you deserve. I know that today
22 is a bitter day for the Organizing Committee and its supporters; for that, I am truly sorry.
23 Thank you, Madame President.

24
25 Council President Praisner,

26 You're welcome. There are no other lights on. So the motion before us is the motion at
27 the rear of the packet moved by myself -- on Circle 124 and 125 -- and seconded by
28 Vice President Knapp. All in favor of the Resolution, please do so by indicating. (Show
29 of hands) It is unanimous. That concludes the business for this morning. The Council in
30 recess, and we'll return at 1:30 for a Public Hearing. Thank you.

July 19, 2007



TRANSCRIPT
July 19, 2007

MONTGOMERY COUNTY COUNCIL

Councilmember Marilyn Praisner, President
Councilmember Phil Andrews
Councilmember Marc Elrich
Councilmember George Leventhal

Councilmember Michael Knapp, Vice-President
Councilmember Roger Berliner
Councilmember Nancy Floreen
Councilmember Duchy Trachtenberg



July 19, 2007

Council President Praisner,

Good afternoon, ladies and gentlemen. This is a Public Hearing on Bill 13-07 Moderately Priced Dwelling Units Amendments which would allow the Director of the Department of Housing and Community Affairs to set aside certain specially equipped moderately priced dwelling units for eligible disabled persons, repeal the authority of the Director to allow an applicant to pay into the Housing Initiative Fund instead of building some or all of the required moderately priced dwelling units in the proposed subdivision and generally amend County law governing the MPDU Program. A Planning Housing and Economic Development Committee worksession is tentatively scheduled for July 23rd at 2:00 p.m. The record will close at the conclusion of the hearing. Before beginning your presentation, please state your name clearly for the record. We have two panels. Actually, we have six people. I'm going to call everybody up at once. Yeah. Rick Nelson for the County Executive. Royce Hanson for the Planning Board. Jackie Simon for the Commission on People with Disabilities. Larry Powers speaking on his own behalf. Wayne Goldstein for the Civic Federation. And Raquel Montenegro for Maryland National Capital Building Industry. And Mr. Nelson, you're first.

Rick Nelson,

Thank you. Good afternoon. I'm Rick Nelson. Director of Housing and Community Affairs. I'm pleased to testify on behalf of County Executive in support of Bill 13-07 Moderately Priced Dwelling Units Amendments. The Executive supports the spirit of 13-07 which would eliminate the options of an alternative payment agreement when an MPDU in a high-service, high-cost development and would be effective on the affordable households in the MPDU program. Additionally the option of making a payment in lieu would be eliminated in cases where environmental constraints related to the site would make the provision of all or some of the MPDUs economically infeasible. While the Executive supports the spirit of the Bill in this regard, he believes this Bill needs to be considered in relationship to an overall examination of the methodology used to establish the sales prices of MPDUs and not as a stand-alone piece of legislation. Such an examination of MPDU pricing was undertaken as part of a study conducted by the Office of Legislative Oversight. Their report was released earlier today and discusses at length the issue of MPDU pricing. The report suggests a possible alternative to the current method used to establish sales prices. The lack of affordability of MPDUs due to the combined monthly cost of condo fees and mortgage payments is a real and serious issue under the current pricing methodology used to establish sales prices under the MPDU program. If Bill 13-07 is passed and with the current pricing methodology in use, it will not solve the basic problem related to locating MPDUs in high-service, high-cost buildings. To adopt the amendments regarding payments in lieu of outside the process of a comprehensive review of the MPDU pricing may result in a perverse outcome under which the developer produces the unit but MPDU eligible households are unable to obtain necessary financing to purchase the unit due to high condo fees. Under the law the developer may request permission to sell unsold MPDUs to non-income eligible households once the list of MPDU eligible households has been exhausted. While the unit still remains an MPDU for full control period, it's still difficult to resell the unit to MPDU income-qualified families in future years due to the higher sales prices in condo fees. In effect these units are neither initially nor in future years



July 19, 2007

1 available to MPDU income-eligible households. Finally, the Executive fully supports the
2 provision of Bill 13-07 that certain MPDUs be set aside for eligible persons with
3 disabilities if the units are specifically equipped for occupancy by disabled persons so
4 long as the Bill clearly defines the scope and type of disabilities to which the bill would
5 apply and the length of time such units must be held before being released for sale to
6 other MPDU qualified purchasers. We look forward to working with you on this.

7
8 Council President Praisner,
9 Thank you. And I just lost my list. Jackie Simon.

10
11 Jackie Simon,
12 Good afternoon members of the Council. I'm Jackie Simon and I'm here to testify on
13 behalf of the Commission for People with Disabilities. The Commission wishes to thank
14 Councilmember Leventhal for his introduction of this Bill and particularly the provisions
15 addressed in 25A4A lines 11 through 14. We offer substitute language, however as
16 follows for those lines. The regulation shall require the director to offer first all
17 accessible units to eligible applicants whose household includes a person who has a
18 physical mobility/disability that requires a no-step entry. We offer this for several
19 reasons: The Fair Housing Act amendments of '88 mandated accessible units in all
20 multi-family developments particularly to address the needs of those with such
21 disabilities. Two public purposes are served by matching available, accessible units with
22 those eligible applicants with the particular need for the accessibility. First, persons with
23 mobility impairments have a very difficult time locating units that meet their physical
24 needs. And persons with disabilities frequently have significant financial limitations
25 which compound their ability to find suitable, affordable housing. We recommend
26 mandating offering the accessible units first to those eligible with need rather than the
27 permissive text of the Bill introduced. Rather than setting aside units. Because no unit
28 should be held vacant while suitable occupants are located. If there is no eligible
29 applicant household requiring the accessibility features, it should then be offered to the
30 general pool of applicants rather than held. This also avoids the decisions of what units,
31 how many units, in which community the units should be held. To implement the
32 language, we would recommend the language of the MPDU application be revised to
33 allow a person to declare that they "have at least one household member with a
34 physical mobility disability that requires a no-step entrance. This may include the use of
35 a wheelchair, cane, walker or a lung or heart condition that limits the ability to go up and
36 down the stairs. Additional documentation may be required". And what we are
37 proposing, several of us as housing advocates had secured a opinion letter from the
38 Office of General Counsel of HUD back in 1994 that it was appropriate to reserve or
39 give priority to people with mobility impairments for the accessible units for whom they
40 were designed. So, there's always been the question of can you choose one disability or
41 one type of disability against another? And these are clearly intended for people with
42 physical impairments that make -- that require more design, more space or the -- limits
43 the ability to climb stairs. So we think this does not put a burden on the builders and
44 developers by holding the units. It doesn't keep them out of circulation. It just will require
45 the office to maintain a list of those with mobility impairments and it would require a
46 doctor's documentation. Thank you.



July 19, 2007

Council President Praisner,
Thank you. Larry Bowers, Powers I'm sorry.

Larry Powers,

My name is Larry Powers and I'm a resident of Montgomery County. I oppose the passage of Bill 13-07 which seeks to amend section 25A of the Montgomery County Code entitled Housing Moderately Priced. If enacted, Bill 13-07 would merely tweak the administration of the moderately priced dwelling unit program in this County when in fact section 25A should be repealed in its entirety and the program itself abandoned. While I'm certain that supporters of this program will be able to trot out quite a few heart-warming stories of lives that have been changed as a result of this program, the Montgomery County Council is responsible for spending money wisely. The MPDU program is and has been a miserable failure. As Councilmember Floreen said in 2004 this program has been in operation for 30 years and yet there are 100,000 eligible families in this County standing in line, or as she said, competing for 4,000 MPDUs. Whether by accident or by design, the MPDU program has turned the Council and the Department of Housing and Community Affairs into a bunch of mediable doges riding through town in their carriages tossing a few coins to the crowd and watching the poor as they dive into the mud scrambling in search of a penny. This program must stop. Despite whatever assertions may be included in the legislative findings in section 25A of the Montgomery County Code, the Department of Housing and Community Affairs has clearly stated that one big reason that the crisis in affordable housing developed in this County in the first place was that the County Council passed laws that slowed down the construction of new houses, of course prices had to skyrocket. But rather than admit their mistake and repeal their stupid laws the Council enacted a multi-million dollar program that after 30 years of operation barely meets 4% of the need it was created to address. This entire program is a travesty and an injustice perpetrated on the poor. All you would have to do in order to provide socioeconomic integration in this County would be to abolish the program itself and simultaneously repeal the restrictions that you and your predecessors placed on the number of unrelated people who can occupy a dwelling. It wouldn't cost you a thing. But it would save me and the rest of the taxpayers in this County millions. Unless you think that all I care about is money and not the poor, my proposal helps every one among the poor to get out of poverty by cultivating their guts, their grits, their ingenuity and their determination to live and prosper in the real world. The MPDU program puts some lucky few into a fantasy land and leaves 96% of the eligible households in this County out in the cold. It's unfair to them and unfair to me. And I demand that it be abolished.

Council President Praisner,
Thank you. Wayne Goldstein.

Wayne Goldstein,

I'm Wayne Goldstein, President of Montgomery County Civic Federation and a member of its Housing Committee. The Housing Committee got involved in opposing buyouts back in 2003. And we spoke out against it time and time again before the Planning



July 19, 2007

Board and were delighted to see when there was interest in the Council to do that. And are further pleased that Councilmember Leventhal has been persistent in trying to end buyouts all together. I appreciate the complexities, some of which have been related today and would suggest a couple of ideas with the obstacle created by the condo fees for -- because of the luxury apartments that are being built or luxury condo buildings that there be a new consideration of the possibility of spreading out those fees amongst the market rate units so that MPDUs that were built in these buildings could be afforded by the people who would qualify for the MPDU program. In addition, it may mean that off-site will be necessary. We just want to be sure that those units are not segregated from the rest of the community but are really well-integrated. We look forward to the work of this Council on this Bill and to further participating. Thank you.

Council President Praisner,

Thank you. Raquel Montenegro. Raquel, push the button in front of you so your mic is on.

Raquel Montenegro,
Of course.

Council President Praisner,
Thank you.

Raquel Montenegro,
Representing the Maryland National Capitol Building Industry Association, its 730-company members and more than 18,000 individuals in the building and the development industry. In 2004, the Council staff represented its report strengthening the moderately priced dwelling unit program, a 30 year review to the Council. The report listed the 12 original legislative findings which provided the rationale for an inclusionary program in 1974. Nothing has changed as far as the rationale. In addition, the report also identified the original seven public policy goals. Goal number six, very important to our industry, was to ensure that private developers constructing MPDUs under the chapter incurred no loss or penalty as a result. And have brought reasonable prospects of realizing a profit on such units by virtue of the MPDU density program, density bonus as provided in chapter 59. In 1988 that density bonus provision was amended to only be available to applicants who provided over and above the 12.5% mandate, a minimum of 15% before you were even eligible for bonus density. When the MPDU program was created, achieving base and bonus density was possible on properties that were easier to develop amidst a world of fewer regulations, few regulations reducing developable area. Today our developers are constantly challenged as the parcel become increasingly smaller, the costs are, and costs are higher. This has, not surprisingly, resulted in projects that do not achieve base or bonus density and are increasingly more expensive. In November 2004 the Council enacted Bill 25-04 keeping in place the payment in lieu but changing it to 125% of the market rate price of a unit in order to be able to do a payment in lieu. MNCBIA opposes this Bill for the following reasons. As the County has developed more and more regulations, as it is addressing real concerns, the ability to develop and build housing is increasingly, increasingly costly. The Bill relies on



July 19, 2007

the applicant having an alternate site in the event they can't do the MPDUs on site. It assumes that the applicant has access to an alternate site? What happens if he cannot? What if there are no resale units available for sale to be purchased to meet the MPDU requirement? What that does is it essentially eliminates the possibility of the developer to move forward eliminating the payment in lieu option deprives the Council of any revenue that could be developed in order to meet that option.

Council President Praisner,

Thank you. Karl, are you prepared to speak for Royce? He's not here yet or is somebody from the Planning Board?

Karl Moritz,

No. He had anticipated that he would be here.

Council President Praisner,

Right. I'm assuming he's on his way since our next item would probably occupy his time. But I know that the Planning Board was meeting this morning, so -- .

Karl Moritz,

I'd be happy to -- for the record, Karl Moritz of the Montgomery County Department of Planning. And the Planning Board did meet on this issue last week and debated it and recommended approval of both aspects of the proposed legislation.

Council President Praisner,

Okay. Thank you. And I assume we'll get the written testimony --.

Karl Moritz,

Yes. Absolutely.

Council President Praisner,

When Mr. Hanson gets here. I just wanted to try and get something on the record. Thank you very much. Councilmember Leventhal.

Councilmember Leventhal,

I appreciate all the witness's testimony. Jackie, we anticipated that we would get some clarifying language on the set-aside for the disabled. And I like very much your sentence that says we recommend mandating offering the accessible units first to those eligible with the need rather than the permissive text of the Bill as introduced rather than setting aside units. I agree with that framework. I'm hopeful that perhaps Mr. Faden can take a third or fourth look at this language. I'm a little concerned that even those who are eligible may not know, there's a lot of words here, a person who has a physical mobility disability that requires no-step entry. I'm an English major and I'm finding that a little hard to parse. So, maybe we could just work together on the phrasing to make it a little more understandable to the average reader.

Jackie Simon,



July 19, 2007

We agree. And one of the concerns always is when the self-declaration of a disability and the nature of it and in the past when they ask whether a person has a mobility impairment, we have questioned whether a person who genuinely has such an impairment, if there's a language barrier or an educational barrier, whether they understood what a mobility impairment was. That's why we precisely tried to identify the language so people would say, oh, my son use as wheelchair or -- .

Councilmember Leventhal,
Right.

Jackie Simon,
-- mother uses a cane to try and be precise. That it's mobility-impaired people for whom these units were designed.

Councilmember Leventhal,
Absolutely. I think there's a happy outcome that can be found here.

Jackie Simon,
I think so too.

Councilmember Leventhal,
I think we may just need to tinker with the phrasing just a little bit. Rick, thank you for your testimony. You and Wayne also, addressed this. When I took a run at this issue in 2004, I included a proposal where we would make condo fee payments out of the Housing Initiative Fund. Your predecessor opposed that. A majority of my colleagues did not go along with that. I did not deal with that this time primarily because it seemed to me that the ability to build units off-site in the same planning area, I mean, first of all, there's a lot of hypotheticals here. The condo market is down now. When I took a run at this issue three years ago Canyon Ranch was before the Planning Board and the vision of the future was more and more luxe condos as far as the eye could see. Now it's three years later, Canyon Ranch didn't happen, it wasn't feasible. There are not as many luxury condos being constructed. Some projects that were intended to be luxury condos are now going to rentals. So, it's somewhat, you know, where the market is. Right now today there are not that many projects involving high condo fees although they certainly could come back in the future. But my question is this. So, number one, I don't think the issue of condo fees is that much of an issue under today's market conditions. If it happened in the future, your testimony did not address the point that I think is very important, about the ability to build the units, they don't have to be in the same building. You can build them at another location. And that's not my Bill. That's existing law. Does DHCA not see that as addressing the problem?

Rick Nelson,
And I think that is clearly an option that is available. I think our preference would be to see if it's possible to build it in the same building.

Councilmember Leventhal,



July 19, 2007

1 Well, that'd be my preference as well.

2
3 Rick Nelson,

4 But part I think of the solution is in terms of the MPDU pricing and the MPDU pricing --
5 help me out, Chris -- also will possibly address and could possibly address the whole
6 question of condo fees and how they are applied. I think the fact that the condo market
7 is down today is true. But who knows what's going to happen tomorrow. And to the
8 extent that we can deal with that issue up front, I think we'd be better off so that we'd be
9 prepared in case the market takes off again. But I also anticipated that those were kinds
10 of issues that we would be raising in the worksession with the PHED Committee.

11
12 Councilmember Leventhal,

13 Oh, I'm sure they will. Thanks very much.

14
15 Council President Praisner,
16 Councilmember Floreen.

17
18 Councilmember Floreen,

19 Thank you. Well, Rick, just to follow up on that exchange with George, we did struggle
20 with this issue. Seems almost every year. But the issue-- are you suggesting that we not
21 take any of this up at this time?

22
23 Rick Nelson,

24 No, we're not suggesting that. What we're suggesting is that we are in fact working on
25 some modification to the pricing of MPDU units. We want to work with the PHED
26 Committee on considering and we'd like to do the two in tandem so that you don't do
27 one without the other because they are very interrelated.

28
29 Councilmember Floreen,

30 Right. But the policy issue is -- we'll talk about this I guess on Monday.

31
32 Council President Praisner,
33 Uh-huh.

34
35 Councilmember Floreen,

36 But the policy issue is with respect to on-site units, which everybody would rather have,
37 the concept really of the -- putting to one side the cost of a unit, which, as you know, is a
38 huge issue in some of the high-rise construction going on. The issue of the fees and
39 how you handle that, condominium fees was quite a nut to crack. And Mr. Goldstein had
40 suggested one idea that we certainly talked about before, which is everybody else
41 subsidizes that. But there are some significant issues as to how that might operate,
42 which we looked into previously. Have you folks given some thought to that? You're
43 saying that this financing -- or pricing analysis will take that into account somehow?
44 (multiple voices).

45
46 Rick Nelson,



July 19, 2007

One of the proposals that the department is considering in terms of arriving at the pricing is to include the cost of condo fees and/or the basis for the application of condo fees to MPDU units which should help to mitigate the problem in terms of cost. And without getting into a very elaborate discussion right now because I do think it's a worksession item.

Councilmember Floreen,
We'll have the elaborate discussion later.

Rick Nelson,
We have to have a lot, yes. We do have to have some more discussions. But that's part of what we have been discussing downstairs and would be presenting to the PHED Committee in terms of reconsidering how we price the MPDU units.

Councilmember Floreen,
Well, that will be an interesting conversation.

Rick Nelson,
I'm sure it will be.

Councilmember Floreen,
I mean I don't even know what you can do under the law. No doubt you'll look at that. The other question I guess having to do -- the building industry has suggested that the issue of location of alternate sites is increasingly a problem or not. And I guess I'd ask you to think about whether their suggestion about expanding that location would be a good one as well.

Rick Nelson,
Okay.

Councilmember Floreen,
So I guess we'll talk about that soon. Thanks.

Council President Praisner,
I had a couple of questions myself. I wasn't clear, and I'm not sure if in the exchange with Councilmember Floreen, Mr. Nelson as to whether you're suggesting that we not take action on the Bill or not. And you said no, but yet the working with the pricing, unless you are bringing something to us for Monday's conversation, it does seem to relate to that issue. So I'm hoping that on Monday we can get some clarification about those pieces. Secondly, I think it is, and I'm not sure where we are in the conversation of MPDUs for Monday, but I do think we need to talk about -- we started to talk about the pricing of MPDUs when we talked about Executive regs for workforce housing. And we haven't finalized that issue. We keep dealing with the temporary regs as I recall. But it does relate to what the pricing for MPDUs is right now. And the question that has come up in the past in the PHED Committee as it relates to condo fees which Councilmember Leventhal raised today, is an issue of when, of the different variable



July 19, 2007

1 condo fees within a complex or compound, whichever it might be, and the ways in which
2 the government might effect that before the condominiums are created rather than after
3 the fact. And I think it would be helpful for us to have that conversation in relationship to
4 the state laws on condominiums, et cetera. So I would hope that you would bring that to
5 our final conversation. Third question I have relates to the SMBIA testimony, Mr. Faden,
6 about expanding the geography of where that alternative site might be. And I wonder
7 the extent to which that is before us in this legislation or would have to be separate
8 legislation.

9
10 Mike Faden,

11 It could be. Excuse me. This legislation was advertised broadly enough so that could be
12 considered.

13
14 Council President Praisner,

15 Okay. Then I would hope that we can have that conversation on Monday, because it is
16 an interesting point and issue. And the more you narrow the, or broaden the obligation
17 and narrow the geography, the tighter that option does appear to me to become. Finally,
18 there are two separate issues within this legislation. One is the eligibility for persons
19 with disabilities to have units; and the second is the buy-out kind of option question. And
20 it appears to me that one might have -- might want to look at these issues in a
21 bifurcated way as well given the questions that have arisen on one piece or the other.
22 The point I have on the eligibility for persons with disabilities, if the units are specially
23 equipped for the occupancy, is really to have you come back and tell us how this is
24 actually going to work. Because that if seems to me to be a major issue. If the units
25 aren't specially equipped, then the director isn't required to set them aside. And the way
26 we deal with MPDUs is I believe to deal with them after they're built from a standpoint of
27 the waiting list issues. You don't get the units until after they've been turned over to you
28 to process and to deal with the waiting list. And we don't determine eligibility until we
29 have units to process. And that's when you go through the issues. So when -- the
30 builder's out of there by then. In that case if the unit hasn't been built to be eligible for a
31 person with disabilities, then it's a retrofit issue to the unit. Well, it would be in that case.

32
33 Jackie Simon,

34 Under the Multi-Family and Fair Housing Act amendments, all of the first floor units in
35 multi-family must be accessible. And all the units in an elevator building must be
36 adaptable. So it would be the accessible units that we would, that meet the Federal Fair
37 Housing Act definition.

38
39 Council President Praisner,

40 I understand that, Jackie. But the point is, it's one thing to say they're accessible. It's
41 another to say that they are adaptable and ready. And so there are still adaptability
42 issues that may be associated with some of the MPDUs depending upon the need of
43 the individual who is moving in. And then the question becomes one of how you do that
44 processing, and how you do the modifications that may be necessary.

45
46 Jackie Simon,



July 19, 2007

1 We weren't envisioning further modification beyond the Fair Housing Act definition of
2 accessibility.

3
4 Council President Praisner,
5 Okay, well that's helpful to know. But that becomes -- .

6
7 Jackie Simon,
8 It would become the purchaser's responsibility to adapt for that personal --.

9
10 Council President Praisner,
11 Well, but we're talking about moderate priced dwelling units where folks can't even
12 access it because the prices are so large. I'm just raising the practicality of actually
13 getting people into the units if there are costs to retrofit the units.

14
15 Jackie Simon,
16 But there are also other sources of funding for retrofitting such as Medicaid and voc
17 rehab and so forth and so on.

18
19 Council President Praisner,
20 Right, I understand that. But I also think we need to have a full exploration of those
21 issues in the context of the MPDU program. Councilmember, oh, okay, alright, I don't
22 see any other lights. Councilmembers, Planning Board Chair Hanson is here. Karl did
23 step in and say that you all supported the legislation. I don't know if you have written
24 comments, Royce, that you want to prepare for the record or give us copies of.

25
26 Royce Hanson,
27 The Board's action -- .

28
29 Council President Praisner,
30 Oh, okay. So we don't have that as yet. Good. Don't forget though that the record closes
31 I believe today, and Monday is our Committee.

32
33 Royce Hanson,
34 I'm not sure where they're going to set up yet.

35
36 Council President Praisner,
37 Okay. Good. Alright. That concludes the Public Hearing. Thank you all very much.
38 Okay. We have scheduled the next two hours or so, thereabouts, for a
39 conversation/worksession with the Council related to the Growth Policy. And I want to
40 make a couple of comments related to that. I also want to announce that this evening's
41 Public Hearing on the Ag Reserve policy will be held here on the 7th floor. We do have
42 30 speakers. And we were able to accommodate the speakers tonight so there will be
43 no Public Hearing next week on the Ag Reserve. So you have next Tuesday off.

44
45 Royce Hanson,



July 19, 2007

1 Madam President, I'm sorry but I won't be able to be here this evening. Callum Murray
2 will be presenting testimony for the Board. We're still in session and I have to get back
3 for several things that we may need five votes for this evening.
4

5 Council President Praisner,

6 Yes. No, I understand. As I indicated when I sent the memo which is incorporated within
7 the slim packet for today's discussion relative to the Growth Policy, the Committees, the
8 two Committees, the Management and Fiscal Policy Committee which has been
9 reviewing the Impact Tax and Recordation Revenue Tax proposals and the Planning,
10 Housing and Economic Development Committee met once jointly and then has been
11 meeting separately to review the recommendations of the Growth Policy and the
12 recommendations relative to the revenue measures that have been presented to us by
13 the Planning Board. The Council also received, as I recall, a briefing on those items
14 from the Planning Board staff and Mr. Hanson earlier. There are a, as the two
15 Committees proceeded with their worksessions and conversations, it became very clear
16 that there is significant interest or desire on the part of Councilmembers without taking
17 votes or making a quantitative judgment. There are significant questions and issues and
18 options and modifications that Councilmembers, both those on the Committees and
19 those not on the Committees, have raised relative to different sections of the Growth
20 Policy and modifications and adjustments associated with the revenue measures in
21 front of us. In order to use our July time wisely and judiciously, and in order to provide
22 the necessary time that staff will need, both staff from the Council, but especially staff
23 from the Planning Board, to develop the options which have been requested by
24 Councilmembers. And in order to provide the appropriate I think deliberative
25 consideration of the issues of this magnitude for the County, what we have determined
26 collectively on the Committees, I think, is that there is not the development of those
27 options to a point of consideration by the Council at this time. And that action on the
28 Growth Policy in conjunction with the revenue measures would be deferred to the fall.
29 With that said though, it's important, I think, for the full Council to have a chance to fully
30 understand what individual Councilmembers have requested and to make sure to the
31 extent there are issues that are of interest to Councilmembers that aren't on the table, in
32 particular issues or requests, I should say, not issues. The issues are there. But the
33 request for additional work, that those items are requested now in July such that staff
34 has the time to develop them by the September time period and still have some time to
35 take a few weeks off for much needed and I'm sure family requests and requirements.
36 So, what we've scheduled this afternoon is an opportunity to go through each of the
37 major components associated with the recommendations to tell and share with the
38 Council where we are and what requests have been made. And to see if there are
39 additional requests that are going to require staff work. And by that I don't mean
40 changing three years to two years or two years to one year. Those will obviously and
41 could be dramatic. But they aren't as elaborate as saying do a totally different policy
42 area calculation or look at the policy areas totally differently. That obviously would
43 require more significant work. So no one is being held to a standard of saying if you
44 don't put two years on the table now, you can't propose two years later. But if we're
45 going to look at a policy area structure that's different from what's been proposed or



July 19, 2007

1 requested, we're going to have to, I think, request staff to start that work now. So it is
2 with that in mind that we've scheduled some time this afternoon. Vice-President Knapp.

3
4 Councilmember Knapp,
5 Just a procedural question.

6
7 Council President Praisner,
8 Sure.

9
10 Councilmember Knapp,
11 Since some of us aren't a member of the Committees and will have heard some of
12 these things for the first time, although they're watching a lot of it, there may be some
13 ideas, thoughts or requests that may come out not necessarily in today, but over the
14 course of the next couple days. And so I was wondering to your point of putting things
15 forward for staff, either Planning Board or Council staff to consider if you would at least
16 give us till next Tuesday or so to assimilate what we heard today so we've got -- .

17
18 Council President Praisner,
19 I think that's --.

20
21 Councilmember Knapp,
22 Request but.

23
24 Council President Praisner,
25 I appreciate that. And I think next Tuesday is not outside of the spirit of this or the
26 requirements of this. Much beyond that, though, doesn't allow us. And the point being
27 that planning staff has to also review and respond as to whether they can handle the
28 workload, and therefore, the Council may have to modify something in the context of
29 that.

30
31 Councilmember Knapp,
32 Right. Duly noted.

33
34 Council President Praisner,
35 So that's also a piece of the process that I think we need to look at. I don't know if our
36 staff has any other comments they want to make before we proceed.

37
38 Glenn Orlin,
39 Just really quickly. You have an addendum that I turned around late this morning, and I
40 have one extra copy if someone didn't bring it with them. You've asked for a lot more
41 information to come back. Here's this two pieces that came in late this morning. One is
42 the summary you wanted from the Planning Board staff regarding what's the, in all of
43 the Planning Board's proposals, it's on a three-page table on circles 1 through 3 of the
44 addendum. And secondly, you asked from finance its estimate as to what the, actually
45 both Transportation and School Impact Tax estimates would be for yield both for the
46 Planning Board's proposals and the Executive's proposals. And they're on circles 4 and



July 19, 2007

5 and the only caveat is for the 2008 estimates that you see there for transportation, schools, that's a full year -- it assumes as if the rate had gone into effect July 1st, that there was no phase in, that there was no rush to permits. It was just a normal year's worth of development paying Impact Taxes. So obviously the amount that would be yielded in '08 would be quite a bit lower than that. But other than that, the forecasts are what they are.

Council President Praisner,

Okay. Any comments you'd like to make before we begin, Chairman Hanson?

Royce Hanson,

The only thing is that I think we have to come back to you with information that we can develop in the time that's allowed. There will be some requests that might take far longer than you're willing to wait for them.

Council President Praisner,

Okay. That, of course, it would be important for us to know the differentiation as soon as possible.

Royce Hanson,

Yeah, I think the best thing that we can do on that is Karl and staff can take a look at various things and review those with the Board. And we can -- next week is a bear, but it is for everybody -- we'll try to get back to you some estimate of if there's things that you've asked for that just simply can't be done by whenever you want. I'm assuming that you want to get back into worksessions on this in early September.

Council President Praisner,

Correct.

Royce Hanson,

So given staff vacations and other things in August, we'll do the best we can.

Council President Praisner,

Alright. Okay. Well, I think that's what our goal is for all of us to do the best we can as we work through this. Okay. With that in mind, and I encourage my colleagues on the Committees to chime in if there's something else that they are anxious to either put on the table or to comment on, to try to give a flavor of the discussion. The charts on page 3 and 4, circle 3 and 4, are basically the modifications in the broadest and narrowest sense depending on which one it is, of the differences that were raised. And since the planning items are first, I will start with those and then turn the lead over to Councilmember Trachtenberg as Chair of the Management and Fiscal Policy Committee to deal with the revenue options that are laid out as far as the differences or some of the context of the conversation. From a standpoint of the PHED Committee conversation, I think one of the -- or the major issue that focused significant conversation related to the reintroduction or introduction of a policy area test. And the establishment of a new test at the policy area level. Affectionately or unaffectionately



July 19, 2007

1 referred to as PAMR now, Policy Area Mobility Review. And I know that Mr. Hawthorne
2 and Mr. Hardy, Dan's here and Rick are here and can explain a little more about that for
3 Councilmembers should there be questions or should there be an interest to broaden
4 beyond the comments that I will make or that Glenn may make. But the concern that
5 was generated was related to trying to understand the components of that. And the
6 methodology being used as well as the outcomes of that methodology. And in the
7 definitions, as you'll recall from your -- from the policy document, the calculations as
8 drawn by Planning Board staff left an inadequate level for 2013 of a very minimum
9 number -- I think it was only one area -- the west Germantown area -- pardon me? East
10 Germantown. I get them mixed up, you know. The east Germantown area of the
11 County. And that generated significant discussion within the Council Committee about
12 the -- about what is inadequate now or what might be inadequate at that point. And
13 therefore, left the Committee to request modifications to those thresholds or calculations
14 of those thresholds that might lead one either in a stair step fashion -- and I wish we had
15 the -- we don't have the graphics to show. It's in the report, but not as colorful as it was
16 on our chart. But that might lead one to conclude that more areas of the County are in a
17 stage -- yeah, thank you, the charts that we had before from the transportation
18 questions, the June 27th discussion, if anyone else has it, have more or -- because
19 there's so many areas that are very close to that inadequate level, a question and so far
20 -- and removed from the County-wide average that there was discussion about using
21 more County-wide average as a threshold level and also looking at those that were
22 towards the lesser -- greater congestion and less free flow from an auto perspective.
23 There was also a request to calculate a jobs and housing ceiling, which does not appear
24 more traditional from our previous discussions of policy areas to look at this more in a
25 job -- to create a jobs housing ceiling calculation and to look at that as an approach
26 policy area by policy area.

27
28 Royce Hanson,
29 There's no way that that could be done by September.

30
31 Council President Praisner,
32 Okay.

33
34 Royce Hanson,
35 September next year maybe.

36
37 Council President Praisner,
38 Okay. We can talk more about that after I finish the four points that are there on Circle
39 3. The third one is to look at and consider the transit mobility in Metro Station policy
40 areas by looking at the Metro Station policy areas more discreetly than they had been.
41 And finally, to look at the calculation of the years of capacity. This is how many years
42 you're looking at forward as far as inclusion within the capital budget and therefore a
43 funded project and therefore eligible to be counted to use four years of transportation
44 capacity. We've used in the past four years, we've used five years. Years ago we used I
45 think six. And so the assessment of calculation that was requested is to use four years
46 of transportation capacity. I believe it's five that had been proposed by the Planning



July 19, 2007

1 Board. Those are the four key elements that are associated with Policy Area Mobility
2 Review or PAMR that had been suggested or requested by members of the PHED
3 Committee. I don't know, Marc or Nancy, if you have any other comments you want to
4 make. Marc.

5
6 Councilmember Elrich,

7 I'm not sure whether subsumed in that discussion is a test that doesn't pretend to use
8 transit as somehow an offset for road conditions. That we actually look at a test that's
9 measures what are the conditions on the roads and what is the impact of development
10 on a road when you have, if you do an approval. Because this is all about when you
11 approve things or whether you should approve things. And I thought some of us felt that
12 it was kind of irrelevant to say that you might have transit service to get us to completely
13 different destinations. And that doesn't match on the -- destination appears. So I think
14 you know, a pure transportation test is certainly what I'm interested in getting.

15
16 Council President Praisner,

17 I think what Marc's referring to is a fairly healthy conversation that we had about
18 calculating the mobility by factoring in the transit option which is a key component of the
19 Policy Area Mobility Review that the concern from Committee members was that the
20 way the transit calculation of offset -- or the option was calculated raised some concerns
21 about it being not necessarily focused either in the same direction or to the same
22 general destination. That it was more a generic or broad calculation of transit as an
23 offset that raised concerns from members of the Committee. Nancy, you want to
24 comment on that piece too or -- no?

25
26 Councilmember Floreen,

27 Well, I have a somewhat different response to that issue. I'm just not entirely clear about
28 whether we're continuing the conversation from the Committee here or not. But we did
29 get a letter from the Coalition for Smarter Growth and Action Committee for Transit that
30 raised a suggestion about including or excluding Metro Station areas from the larger
31 policy area for analysis here and it's sort of a detail. But I guess my comment is I'd like
32 at some point when we get to it for staff to take a look at that. I think we talked about it a
33 bit. But, and I have this stuff for you on this particular issue. There's some interesting
34 thoughts I think is very different from where Marc is. But --.

35
36 Council President Praisner,

37 Well, there were two separate issues I think.

38
39 Councilmember Floreen,

40 Yeah. Well, it's part of that, part of that analysis. I'd like your reaction to that when we --.

41
42 Royce Hanson,

43 We did look at that initially, but we can look at that again.

44
45 Councilmember Floreen,

46 Yeah.



July 19, 2007

Royce Hanson,
And I think as we come back to you on this, what may be helpful to you is for the staff to do its work for the Board to take a look at this and to come back to you with some recommendations from the Board as well for how you deal with this.

Council President Praisner,
The Metro Station issue or the calculation of the transit?

Royce Hanson,
All of these issues.

Council President Praisner,
Okay.

Royce Hanson,
All of these issues.

Council President Praisner,
Folding in the point that Marc has raised as well as the point that Nancy has raised, both of those. Okay. On this issue as well, Councilmember Andrews.

Councilmember Andrews,
Thanks. It's been a long time since I served on the PHED Committee and I'm sure they're grateful for that. (laughter) Well, maybe not you, but some are. And the Management and Fiscal Policy Committee, not so long since I served on that one. I served a long time on that. But already the acronyms of growth are receding into foreign language. But what I'm really interested in is what I think Marc Elrich was getting at which is I'm interested in traffic flow. I want to get a traffic flow test. That's what I want to have be factored into development approvals. Not just mobility. So if that's what Marc was describing, and it sounded to me like it was, that's what I'm interested in seeing a test of.

Council President Praisner,
Okay.

Royce Hanson,
Could you, just for my benefit, describe a little bit.

Councilmember Andrews,
Okay. What I would want to see is that new development that is approved is not using up all the new road capacity or making -- I want to understand the effect on the existing road capacity and the flow through the intersections in that policy area.

Royce Hanson,
That's done by the Local Area Transportation Review.



July 19, 2007

Councilmember Andrews,

Uh-huh. Okay. And I would, what I want to see is that strengthened. Because I want to see improvement in it. I want to find out what would it take to improve our current traffic flow experience for most people in that area if -- my goal is not to tread water on congestion, but to find out how we can actually make a dent in it so that the experience on the ground is better than it is now.

Royce Hanson,

Good luck.

Councilmember Elrich,

You keep saying that. But I think we do need to make an effort to make things better.

Royce Hanson,

The way to do it is, frankly, with much better design of areas that can increase transit use and walking and biking. If you don't do that, basically widening roads, improving intersections will work for a little while. And then as people find that those intersections are working better than the ones that they have been going through, they all flow over there. The transportation system's a lot like a water system. It seeks the easiest way to flow.

Councilmember Andrews,

Uh-huh.

Councilmember Elrich,

I think neither Phil and I are really interested in how many roads you can widen and how many, particularly when you're talking about the older part of the County where it's most developed, you don't have those options. And so it's critical to think about, how do you get to the point where we look at transit options and what does it take to create that? Design has some impact for sure. But investment in the infrastructure to get people there some other way and planning where that infrastructure is going to go.

Royce Hanson,

We can bring you a lot of that less in what you adopt as Growth Policy and we can bring it to you in analysis of the CIP and the transportation projects that are outside the six-year CIP that are not funded, that need to be brought into the CIP.

Councilmember Elrich,

But until that's done, to have to have a Growth Policy that lets things simply happen and simply make things work until people figure out how they're going to deal with making transportation systems better just condemns us to an ever repeating cycle of things getting worse. If you want things to be better, if that's the ultimate goal, you can't leave something in place which makes it and drives it in a worse and worse condition. And I don't think anybody's going to have any serious discussions about what it takes to make things better as long as they can continue to build under the current scenario. Why



July 19, 2007

1 would you? Why would anybody sit down and have a serious discussion with the
2 Council or the planners about what would it take to do something about the
3 transportation system in this area if they can continue to build to their heart's content
4 under the current system and we declare that no matter how bad the situation is, if cars
5 dropped to eight miles an hour on Georgia Avenue and we declare that okay, why is
6 anybody going to talk with us about transit system? Nobody will talk with us. There's no
7 reason to.

8
9 Councilmember Andrews,

10 And I understand the local area traffic test looks at traffic flow in the local jurisdictions
11 but I, local intersections, but I want to see a policy area traffic test that looks at the flow
12 as well outside the immediate area.

13
14 Royce Hanson,

15 Well, what the Policy Area Mobility Review does is look at the travel time essentially that
16 it takes a person from that policy area on average. The average driver from that policy
17 area to reach all destinations from that policy area. One of the reasons it was selected
18 was because it does focus on that kind of issue. Now, what it says is that a certain
19 percentage of the -- I'm not sure I'm using the right term -- design speed for the area is
20 reached, 100% of the design speed, everything would be operating at level of service A.
21 If it's posted for 40 miles an hour, you could go average 40 miles an hour. If it's posted
22 for 40 miles an hour and you're achieving 60% of that speed, then it's less than that
23 naturally.

24
25 Council President Praisner,

26 So the conversation that we had within the Committee that I think generated the most
27 discussion back and forth was one related to calculating since very few, if any, roads in
28 most of the County are going to be at a level A, what is the tolerable level of
29 congestion? What's the appropriate level of congestion for whatever policy area you
30 may be looking at? Where the debate ensued, I think, was in the methodology of
31 calculating that level of congestion. Where you draw the line and how you draw the line.
32 And that's why the Committee, at least, was interested in looking at variations in
33 drawing the line from a standpoint of tolerability of congestion. And that's the question
34 about the adequate and inadequate level. The other question was in the generation of
35 the mobility, it was, as we talked about in a more understandable level for me, not an
36 engineer and not anybody who goes through the calculations in any way, if you were in
37 your vehicle driving and it took you X amount of time to go a certain -- in a certain
38 direction and you had the option of taking public transportation and it took you X amount
39 of time, then you would get a factor of that option and that choice. The concern that was
40 raised is, is that a true test of the choice? And are the components of that discreet
41 enough and understandable enough and specific enough to the real live area and real
42 individual walking, me or you, walking out of your front door and saying I'm going to
43 walk to the bus stop or take the bus right outside my door, or drive my car to Metro and
44 park it and then take it or whatever it might be because I've evaluated the factors and I
45 can get to my destination in a reasonable variance from getting in my car and going by
46 myself. And therefore, what is the mobility factor within that area? Now, the concern that



July 19, 2007

got generated was in the description of how one made those assumptions about mobility from a transit perspective. I hope I'm doing a good justice to the debate.

Councilmember Elrich,
You're too kind.

Council President Praisner,
And also the issue.

Councilmember Elrich,
You're too kind.

Council President Praisner,
Well, but I'm trying to, in my terminology and my, you know, vocabulary, trying to share the debate of what we talked about and the concern I think by all three Councilmembers from different perspectives perhaps was, is that a true comparison to define the mobility area rate in that area? Are we really looking at apple and apple? Are we looking at someone getting in a car or getting on the transit and going to the same destination or are we doing the calculations based on hypothetical or generic kinds of transit as opposed to you and your two choices? And I think there was an interest on the part of Councilmembers and the Committee to have a really more true test of that individual's two choices as opposed to looking at transit in that policy area. And there was also interest in looking at it in the evening rush hour rather than the morning rush hour, which is where the calculations were originally made.

Councilmember Andrews,
Okay.

Councilmember Elrich,
And it wasn't based on origin destination – which is what most people would have thought a comparison would have been made on. Which is what the Transportation Research Board models when they show you how to do the test. And the other factor is that below the level of service C is not considered acceptable for choice riders, so to have a table that includes levels of service D, E and F as offsets for something else is meaningless because a choice rider will not, you know, will very unlikely use any service that's worse than a level of service C which means that it's not a choice.

Royce Hanson,
(multiple voices) The question that I would have is, does the Council want to set a level of service above which or below which, whatever we're calling it, we're going to say that if the level of service for transportation in Wheaton is level of service D, that's not acceptable? Wheaton's in moratorium.

Councilmember Elrich,
Well, from my perspective, I think we need to have a discussion about what levels are appropriate in what areas of the County. I think, you know, Mike made a point about



July 19, 2007

1 Germantown and that, on the one hand in the Germantown core a level of congestion
2 there might be more appropriate than what's appropriate in the Germantown wider area.

3
4 Royce Hanson,
5 Why?

6
7 Councilmember Elrich,
8 Well, because in the Germantown core for a few blocks, in a more urban setting that
9 you're trying to develop, you would expect that a few office buildings or a concentration
10 of office buildings emptying out in a very relatively small square block area are going to
11 produce high levels of congestion. As it disperses from Germantown and the blocks get
12 longer that ought to, that impact ought to change, and it normally does change. So
13 that's a reason why and so you ought to have different levels for different parts of the
14 County.

15
16 Council President Praisner,
17 Royce, I don't think anyone has said that area should or should not be a moratorium. I
18 think what Councilmembers have asked for is an option that shows different thresholds
19 and what the implications of them might be. But we haven't suggested, and I personally,
20 and I haven't seen anyone else say that the goal is to identify areas for moratorium. But
21 you need to know what the levels of congestion are. And you need to know what
22 variations -- that would raise for me a question of was the motivation in developing the
23 thresholds to make sure there is no area in moratorium.

24
25 Royce Hanson,
26 No.

27
28 Council President Praisner,
29 (multiple voices) Well, then the goal of getting --.

30
31 Royce Hanson,
32 The purpose of developing the threshold was to try to develop a -- we didn't succeed
33 obviously -- an understandable way of measuring it and the, what came out on one side
34 or the other side of the line was not where we started. Where we started was with what
35 the standards are for transit and road mobility and let the policy areas fall where they
36 fell.

37
38 Councilmember Andrews,
39 Yeah. Let me ask a quick question.

40
41 Council President Praisner,
42 Yeah.

43
44 Councilmember Andrews,
45 Can one of the Committee members describe the theory, the proposal as presented by
46 the Planning Board in terms of whether it was general access to transit in that policy



July 19, 2007

1 area versus specific comparison of trips by transit or a car-- how is it different from what
2 you would like to see? How is it different for the, you know, the real person out there in
3 the community getting it, deciding how to go to work?

4
5 Councilmember Elrich,

6 They average, they average the trip times out of a policy area by car and by transit, they
7 made a further note that parenthetically that the people going on transit are going to
8 different places than people going by car and they compared times. It's totally different
9 than --.

10
11 Councilmember Andrews,

12 So they didn't compare destination? It's trip from A to B for both.

13
14 Councilmember Elrich,

15 No.

16
17 Council President Praisner,

18 No.

19
20 Councilmember Andrews,

21 Okay.

22
23 Councilmember Elrich,

24 And that's what the Transportation Research Board says you do if you're going to use
25 this model. So they took the model and then they didn't do what the Board says in terms
26 of how you measure --.

27
28 Royce Hanson,

29 I really want Dan to respond to that.

30
31 Councilmember Elrich,

32 You've seen the model and the '99 is the same as the 2003.

33
34 Dan Hardy,

35 For the record, Dan Hardy with Transportation Planning. I think that the concern about
36 aggregating is any time you do an area wide review, there's going to be some
37 aggregation. And the discussion is how much aggregation do you do? Mr. Elrich pointed
38 out that in the designing and operating a transit service you look at each grouping of a
39 bunch of origins to a bunch of destinations, so not just you and your neighbor
40 necessarily, but say all of Silver Spring to all of Clarksburg. And we could do that, work
41 that math, then the question again is if any area has level of service D, if from Silver
42 Spring to downtown D.C. is an A but Silver Spring to Clarksburg is an E, then in the
43 morning going to work Silver Spring to Clarksburg is probably always going to be easier
44 to get to by car than by transit. That's the challenge is what kind of policy guidance does
45 the Council want to give in terms of, do you average all those? Which is what we did.
46 We said more people are taking transit to Washington from Silver Spring than they're



July 19, 2007

going to Clarksburg so that should weigh more heavily into the average experience for Silver Spring as a policy area.

Councilmember Elrich,

But then why does that matter? If I'm using this to decide whether or not a project gets built, why is this comparison that you're making including transit is remotely relevant? The issue is if I build a project that's going to generate X number of jobs, X number of trips, X number of housing units, X number of trips that go out on the road, the road will function or not function. It's irrelevant whether it's always going to be a level of service E to go to Clarksburg and level of service B to go to Wheaton by bus that's not what's going to happen on the road. And the roads will continue to fail if you allow enough of an offset for your transportation factor, which is meaningless because they're not necessarily going to the same places. Why even use that as a test?

Dan Hardy,

I think there's been general acceptance that we should allow more congestion in Silver Spring than we allow in Clarksburg because of the different transit service ability. That's a long-standing County policy. I think the question was when you consider how much congestion to allow in Silver Spring, do you consider the average access to transit for all the folks that want to use transit there or do you say you've got to be able to get to Clarksburg and our concern is that that would, you know, we let the dots fall where they may. If we were to say that everywhere to everywhere should be transit level service C, we would never really commit ourselves to spend the money to make transit service in the morning from Silver Spring to Clarksburg good enough so that Silver Spring to Clarksburg would get that quality level of service. So even within an average area wide, there are some trade-offs. Some folks are going to have poorer levels of service than the average commuter in that policy area.

Councilmember Elrich,

I almost think you, to me you're talking about this backwards. If you're talking about Silver Spring, the problem in Silver Spring is coming into Silver Spring in the morning. And what's the, you know, what's the impact of a development that's going to draw more people there, what difference does it make what the mobility time from Silver Spring to Clarksburg is or anyplace else. The problem is coming in. And if I'm approving projects based on whether people can drive to Clarksburg in downtown Silver Spring that seems like a total disconnect.

Dan Hardy,

I guess in our example with the briefing we used Aspen Hill, so we could do the same discussion with Aspen Hill. And it's easy to get to Aspen Hill to the district versus getting from Aspen Hill to Clarksburg and do we want to weigh the fact that those should have maybe our proposal different level of transit service to be considered adequate.

Council President Praisner,

And that led, if I may, because we could go on on this issue all afternoon, I suspect and I want to make sure we cover every one, that led to the discussion of jobs and housing.



July 19, 2007

1 And to the conversation, I think, about going back or reconsidering the issue of redoing
2 policy areas by jobs housing and incorporating what the master plan and what the goals
3 were for an area and what development might occur as it relates to jobs housing. So,
4 those were the issues as well as the issue of evening calculation as opposed to morning
5 calculation. Any other comments on the -- Phil, unless your question-- .
6

7 Councilmember Andrews,
8 No, thank you for the explanation.
9

10 Council President Praisner,
11 Any other comments or questions on the Policy Area Mobility Review section?
12 Councilmember Floreen, yeah, you were next.
13

14 Councilmember Floreen,
15 I just wanted to make the observation for the full Council that I think one of the policy
16 issues associated with this, which is something we're going to have to come to closure
17 on one way or the other, is what is -- and Mrs. Praisner mentioned it earlier, what is the
18 goal that this achieved? Is it a design to stop things? Is it designed to permit things to
19 continue? Is it as the Planning Board advanced to measure mobility really? Or is it just a
20 test to have a test? I think the issue of -- or is it a mechanism to encourage transit,
21 which I think it really is, or to acknowledge that there are a mix of uses on the roadway
22 system that are out there. The challenges and the details of understanding what that
23 truly actually measures. But I remain -- I think -- well, I'll just say that it's an issue for the
24 full Council to determine or possibly be resolved in the Committee, what is the point of
25 this? Because certainly in most parts, many parts of the County, we don't want to build
26 wider roads to make an improvement to mobility. We just don't. And I don't think we
27 always want to improve intersections also. We'll get to that in a sec. But I think there is
28 an inherent tension here between policies to encourage transit and policies to improve
29 roads and widen them and do things that are empathetic to many community needs and
30 concerns. So that remains an issue that I have with this. And I think it's going to have to
31 -- it should be one, I think, that the full Council should agree upon. Because if it is a CIP
32 issues this forces, as have most of our policies in the past, forced attention to roadway
33 widenings and intersection widenings which forces a mathematical analysis by the
34 highway people. Which is not necessarily the right analysis for all communities. Perhaps
35 in Germantown east where we really have needs, it help to highlight the need for
36 roadway lengths that don't exist today. But in most parts of the County that's really not
37 on the table. And we resist significant widenings, certainly in a large portion of the down
38 County. Communities resist them, it's not good for the environment. And certainly we
39 don't want to build more than we need to build. So that's part of the tension here and I
40 think we do need to come to closure and I hope you all can help us do that in
41 September. Maybe something will appear out of the sky in August that will help us on
42 this subject. I do think we need to focus on what is the problem, what is the message
43 that this sends to our CIP planners and our community other than the fact that there is a
44 test? That's the challenge I think. And I don't think we've resolved that.
45

46 Council President Praisner,



July 19, 2007

1 The only other comment I would add to that is I think it is as much an operating budget
2 issue as it is a capital budget issue that we have got to begin to look at from a
3 standpoint of managing buses or other elements that are not part of the capital budget.
4 Vice-President Knapp.

5
6 Councilmember Knapp,

7 Thank you, Madam President. I'm struggling a little bit as to kind of where to plug some
8 of these pieces in. And I think Nancy kind of alluded to it in the latter part of her
9 comments. And this is what I keep getting back to is the, what are we trying to fix or
10 what are we trying to truly accomplish? And that's not directed at you as much as I think
11 it is to us or all of us collectively. The one thing that in all that I've read that you sent
12 over that I think is most helpful or appears to me to be the biggest question in front of us
13 is the linking of the infrastructure with the actual CIP. Be it operating or capital budgets.
14 Because to me, that becomes the underlying issue. We have master plans which were
15 based on various projections, various -- a variety of planning elements that you've laid
16 out for us. I think in many of our communities we've actually done much of what was
17 anticipated in those master plans from an infrastructure perspective. And yet, there are
18 still issues which then either means something wasn't accurate in the plan that we'd
19 done, there's a variable that we haven't identified or there are other circumstances. And
20 so it seems to me until we can get a better sense of what is the link between the plan
21 versus what was actually put on the ground? What did we actually fund and what's there
22 now? It's difficult for us to figure out which variable to change. I was looking at the page
23 that Ms. Praisner's reading from. All of these are tools to accomplish certain outcomes.
24 The question just becomes what problem are you trying to fix? And so it seems we can
25 have conversations for a long time about a lot of these pieces but to what end? And so
26 it seems to me, from my perspective, if there's a charge to you, and I don't think you,
27 you can't do it between now and September -- huh. (laughter) You may want to stay
28 with us a little longer, Mr. Chairman, it a little safer here apparently than driving back to
29 Silver Spring.

30
31 Royce Hanson,
32 Keep talking.

33
34 Councilmember Knapp,

35 But to be able to put that together and get that analysis done because then we can
36 begin to figure out how does that infrastructure effect quality of life and then effect the
37 population and job growth or regulating whatever the appropriate case is. And that
38 seems to me the big thing that we need to get done. And once we have that type of
39 analysis in front of us, we can then look at these other pieces. You know, we have a
40 Growth Policy. You know, we have one every two years. We have one in place. Things
41 aren't just happening willy-nilly right now. They may not be happening as well as we'd
42 like them to. But it's not as though things are necessarily running amuck. Things that we
43 have on the ground now that we're seeing have happened over a period of 10, 20, 30
44 years and so haven't happened in the last 18 months. I think in this year we built 1,800
45 new housing units or something like that in this County. So it's not as though we're
46 seeing massive amounts of new development taking place. So I would rather see us



July 19, 2007

1 take the time right now and get that analysis done to see what is it that we're actually
2 trying to address. And then make sure, be it Impact Taxes, be the reallocation of our
3 priorities within the CIP, but really identify what that is. The other piece I think we have
4 to get to and we talked a little bit about this in our meeting yesterday, is the definition of
5 what it is we're trying-- of what the problem is. You know, if we look at traffic congestion
6 today and say it's worse now than it was 20 years ago, answer's yes, it is. Is it bad
7 because 20 years ago there wasn't much and when I was here 20 years ago I liked that
8 and there's more now so I don't like that? Or is it, you know, there were plans that were
9 put in place where we tried to identify certain lane volumes, certain things that in many
10 places are there. And in a lot of places they're actually what people had forecast. And,
11 but people don't necessarily like that because it's more than what was there 20 years
12 ago. So I think in whatever we do we have got to be able to articulate the policy or the
13 theory of what we have in front of us in some of these charts to what people can
14 actually see on the ground. Because I'll be honest, I have this, you know, the page on,
15 packet page 12 from which you presented that shows the various critical lane volumes. I
16 can't tell you what, they're numbers on a piece of paper with colors. And they mean
17 something but I don't know and most normal people wouldn't be able to link that, these
18 things to what's really happening. And so I think it's going to be important for us to
19 define what it is in the places where it is a problem in a real way and then be able to
20 show how we're making progress on that or that that's what it's going to be. And as long
21 as we can keep it there, that's what it's going to be in a more urban community. But I
22 think we need to -- my vote would be to go out and really do the CIP analysis because
23 that's going to tell us, I think, what resources we need, where there are places that we
24 haven't done the right things, we're going to back and retrofit those things and be able
25 to move forward from there. The other piece and this struck me was on page 12, where
26 we show the critical lane volumes as it moves through the County, where we've got our
27 wedges and corridor, it looks like the corridor trails off, it has high critical lane volumes
28 down in the Bethesda area, Silver Spring area and then the further it moves up the
29 corridor, the critical lane volumes are greatly reduced. That doesn't seem to make a lot
30 of sense to me only because that's where we want to have the types of densities that,
31 for our community to grow. And it seems odd that you would have greatly reduced land
32 volumes along the corridor where you want to see that density tapering off. Especially
33 when it, we know it ties into the density that connects back up into Frederick County. It
34 would seem that you want to have kind of a consistency there and then kind of a tenting
35 out from the center of that corridor out to the wedges. Just seems to me so we make
36 sure we encourage right density.

37
38 Council President Praisner,

39 It sounds to me like you're moving into the Local Area Transportation Review question.
40 And the first bullet under that is tightening critical lane volume standards in suburban
41 areas and rural policy areas which means that the question becomes defining what's a
42 suburban area and what's a rural area. And if you're talking about the 270 corridor as an
43 area with similar critical lane volume calculations as you had in your urban areas of
44 Bethesda and Silver Spring, that is an additional request to show what would happen if
45 one took the whole 270 corridor area as defined, as our only corridor, I would add, and



July 19, 2007

1 had an expectation for critical lane volume calculations. It wouldn't be tightening. It
2 would be loosening by increasing the threshold levels in those areas.

3
4 Councilmember Knapp,
5 Right.

6
7 Council President Praisner,
8 What would happen if one did that? So let's put that on the list.

9
10 Councilmember Knapp,
11 I would do that.

12
13 Council President Praisner,
14 -- as a request for your calculations to look at the 270 corridor policy areas and
15 intersections at a critical lane volume threshold that is more in keeping with the higher
16 numbers that one expects in Bethesda and Silver Spring.

17
18 Councilmember Knapp,
19 I would agree with that. The only other point I would raise and I then I will have no more
20 comments, is also looking at having transit areas considered along the corridor cities
21 transit way. Not just looking at metro policy areas but really extending that transit area
22 all the way along where we know we've got the right of way and where we've got that
23 master plan. It ties to the same affected issue.

24
25 Council President Praisner,
26 Alright. So, that point would be to look at the something like the corridor cities transit
27 way and I guess when to be responsive as well we'd say take the Purple Line and look
28 at those areas as to what the critical lane volume calculations are for those. Okay? Let
29 me make some comments about the Local Area Transportation Review or LATR
30 discussion. Because what we did discuss within the Committee is, as you recall in the
31 last two discussions about the Growth Policy, both in 2003 and 2005, although there
32 was no action in 2005, there was discussion about, as the policy area was removed
33 from consideration and there was no policy area review since 2003, there was further
34 focus on the Local Area Transportation Review. And certain standards were put in place
35 in 2003. And then there was significant consideration about tightening even further the -
36 - in 2005. Most of those -- all of those did not get changed because the Council did not
37 adopt a modification in 2005 to the Growth Policy. We're dealing now with the 2003
38 Growth Policy. And so we had some conversation about Local Area Transportation
39 Review including looking at the 2005 recommendations and some recommendations
40 from staff of Local Area Transportation Review options. And the bullets on circle 3 relate
41 to that. In other, the reverse of what Councilmember Knapp just asked for as it relates to
42 the 270 corridor was to look at a lower number threshold for the critical lane volume
43 standards in what are more rural and suburban areas. The, also as you recall when you
44 look at Local Area Transportation Reviews, the discussion was of the signalized
45 intersections out from that development that were recommended to be looked at with
46 the Planning Board having latitude as to how far one went out and the discussion was



July 19, 2007

1 to, depending upon the size of the development, to go even further out as far as a
2 recommendation. So that's that second bullet. The other discussion as you recall there
3 is an alternative review procedure for Metro Station policy areas, and the proposal
4 would limit the congestion allowed under that calculation. That's the third bullet. The
5 fourth, there is queuing analysis that is done at this point in Metro Station policy areas,
6 but it isn't done outside the Metro Station policy areas. And so we're looking, requested
7 that staff look at queuing analysis beyond the Metro Station policy areas. And then a
8 further requirement or tightening relates to, if the congestion exceeds the LATR or Local
9 Area Transportation Review standard, requiring that the background traffic, meaning the
10 traffic that is calculated now as being part of existing traffic would be required to be
11 mitigated. So you would have to go even further than the mitigation standard that one
12 has now. Those are the recommendations of request for options to be developed that
13 Council and Committee, PHED Committee and Council staff have asked staff to do
14 some work on. Councilmember Floreen.

15
16 Councilmember Floreen,

17 Thank you. This is another area where the Coalition for Smart Growth and Action
18 Committee for Transit had some comments in that material I gave you, and I'm not sure
19 that what they're suggesting is all that different from what you're proposing. But when
20 we get to it, if you could have -- tell me what the differences are. Are their suggestions
21 significantly different -- they emphasize a transit, attention to transit and walkability and
22 all that stuff, which I think is in keeping where you are, but I'm not entirely sure. So if you
23 could respond to that.

24
25 Council President Praisner,

26 So, I think the request, if I can put it, is in addition to the policy area review comments
27 from this group.

28
29 Councilmember Floreen,

30 Yeah.

31
32 Council President Praisner,

33 If you could react to the local area also and to the extent they require you to do
34 development rather than reaction if you could let us know if it's doable during this time
35 period.

36
37 Dan Hardy,

38 Would that be for next week, you'd like --?

39
40 Councilmember Floreen,

41 No, no, there's nothing else next week.

42
43 Council President Praisner,

44 All I meant is, go back and work. Let me make clear. There are no other Council
45 discussions unless there is something that you in review require to get back to us.

46 There is, Councilmembers have an additional week to let you know options to the extent



July 19, 2007

1 there is something that raises a concern that you need something else or some problem
2 before the 31st, July 31st, you need to let us know. But beyond that, we are going to be
3 dealing with this next in September.

4
5 Royce Hanson,
6 I think we may have to come back to you on some of these things and simply say -- this
7 won't be the last time you get to act on Growth Policy. That there are some of these
8 things that we won't have answers to.

9
10 Council President Praisner,
11 Well, Royce, as you know and as continuing Councilmembers know, every Growth
12 Policy includes further work to be done.

13
14 Royce Hanson,
15 Right.

16
17 Council President Praisner,
18 And so the question and we will and have asked you at least to develop a list that says
19 what's the other work that needs to be done and we will lay that out as part of your work
20 plan.

21
22 Royce Hanson,
23 Yeah, we'll do that. It may take some amendments to work plan.

24
25 Council President Praisner,
26 Sure. Okay. If there are no lights and I see no lights on Local Area Transportation
27 Review, I want to move to the last item that the PHED Committee discussed. One other
28 context. Before I move to the school test. Councilmembers and Mr. Hanson have
29 received copies but there is a memo to Royce that Councilmember Berliner and I sent
30 related to the issue of sustainability that kind of ties this issue more to a broader quality
31 of life indicators and rather than just the term sustainability because that has generated
32 a variety of questions and reactions from the public as well as, I think from
33 Councilmembers. So just make that point. Now on the school test, the -- I want to start
34 from the bottom and work up. There is within the discussion from the Planning Board a
35 recommendation to use the school system's calculation of program capacity rather than
36 a Council's Growth Policy adopted program capacity. We had a significant discussion
37 about the issue of the fact that buildings are constructed at a certain capacity, program
38 capacity is the program that's incorporated in that school so for example, a classroom
39 that has 22 or 21 or 25, whatever the level may be for a grade level class may the next
40 year be used for an ESOL class or a special education class that has a mandated
41 threshold level that is lower than the regular classroom level is and thereby effecting the
42 capacity of the school that was just constructed with a different capacity level. And the
43 concern that's been raised by the community, the advocacy group is that we should be
44 using program capacity of the school system. Concern raised by others in the
45 community is that is a moving target and what was eligible, what was calculated for a
46 school one year varies only by a program decision and can be changed the following



July 19, 2007

1 year and that does not have a consistency associated with it. So what we discussed is
2 that there should be at least some benchmark time period in tying it to the calculation of
3 transportation capacity and the fact that we do a CIP every two years, although we do
4 six year CIP. But also that the school system is required to do a five-year plan, which
5 means that they should have some sense for more than one year of what's going to be
6 going on in a school system. The assumption or the suggestion under the school test is
7 to keep a programmed capacity calculation, require that that be locked in for four years,
8 in order to have some consistency with a cycle and to give some certainty to the
9 calculation process. The other elements related to enrollment to capacity that that is a
10 four-year calculation as well. That we also eliminate the special facilities payment
11 provision. What would be the implication of doing that? And what would be the
12 implication of using a different threshold of adequate and mid-adequate? What would be
13 -- what would also be associated with introducing some kind of ceiling flexibility
14 provision? Or using housing ceilings since we're talking about jobs housing and you're
15 talking about households in that calculation, is there a way to introduce housing ceilings
16 in that perspective? Those are the school test issues that we've asked folks to consider
17 modifications on. And I see no lights on that issue. So I will now turn it over to
18 Councilmember Trachtenberg to discuss the options that have been discussed under
19 the Transportation Impact Tax and the School Impact Tax.

20
21 Councilmember Trachtenberg,

22 Okay. I'm going to try to get us out of here quickly in 45 minutes. And obviously the MFP
23 Committee has had conversations about both the Transportation Impact Tax and the
24 School Impact Tax. And we've had some very modest conversation about the
25 recordation fees and I'm actually going to start by just posing some questions, which in
26 effect, I think have framed most of what we've talked about. And they're rhetoric but I
27 think important and I would note that there are two charts that are of use in this
28 discussion. One is on the addendum that was provided, which is a forecast of Impact
29 Taxes, a financial statement that was provided to us which I think is helpful to look at as
30 well as an outline of what revenue would be from any kind of recordation fee increase.
31 Again, that's on a packet that was provided I believe back last week to an MFP
32 worksession which shows again that the County is not at the top of the totem pole when
33 it comes to the collection of recordation fees. But here are the questions really which
34 are, what share of the cost of new capacity should new development be paying for?
35 Should the Council set that rates based on a mathematical formula, a market based
36 approach or really simply an ability to pay? Clearly who is going to pay the taxes, the
37 Impact Taxes and how complex should the schedule be and how flexible should our use
38 of that revenue be? I'm just going to simply start with the recordation fee conversation
39 only because it's very straightforward and as I said, there are a number of handouts that
40 have been provided which really outline what the options are. I think the only thing we're
41 waiting on to perhaps expand on this conversation is some information about what is
42 available from other local jurisdictions, in other words, comparing ourselves to perhaps
43 Fairfax County or Louden County. So that's really what was discussed again in a very
44 basic way around the recordation fee. The next conversation though I'm going to start
45 with is the one about School Impact Tax and, you know, what's really interesting and of
46 course no surprise to us I'm sure, is the overlap that exists between this conversation



July 19, 2007

1 and really the one we've had on the Transportation Impact Tax. And one of the things
2 that I guess we've really got to ask ourselves is should the rates be calculated on a per
3 square foot basis? That was part of a conversation that we had in Committee and again
4 no surprise to anyone, we didn't have consensus on that. Should the rates include some
5 measure of progressivity, perhaps by exempting a certain amount of floor area? Should
6 the rates be set less as a function of traffic impact and more in line with the rates in
7 neighboring jurisdictions? And I think that again those are important things that we need
8 to be asking ourselves, but if I go down the list that again was provided in today's
9 worksession agenda, there are a number of other items under the School Impact Tax as
10 well, beyond those. And one thing to consider as well is the exemption around
11 affordable housing versus work force housing units and no surprise to all here, we didn't
12 have any real consensus around that, but those are things that we are clearly going to
13 have to identify. And I think if there's one thing clear about what was presented to us in
14 a way of options from Park and Planning is the context within MCPS's capital
15 improvements program. In other words, what's very clear is that the Planning Board was
16 proposing that we capture a certain level of rates so that we could actually provide
17 capacity. You know, I guess the rhetoric question in that is how much do we want to do
18 that? One thing that staff mentioned to us during conversation was the fact that the
19 current laws call for the rates to be adjusted automatically on July 1st. And it was
20 pointed out that CPI and construction costs inflation usually track differently than that.
21 So perhaps that's something that we've got to adjust. I'm going to go back to really four
22 questions which I would encourage colleagues to be thinking about when we -- as we
23 revisit this in September. And again, the issue of work force housing, should it be
24 discounted or exempt? Currently, the tax is assessed on work force housing just as it is
25 on market-rate housing. And I think that is a defining question. Should all the units in a
26 housing development be exempt if more than 30% of the units are affordable? And
27 currently only the affordable units are exempt. And what degree of progressivity should
28 be included in the rates? And what percentage of the marginal infrastructure school
29 costs should be paid by new housing? And currently again the rates are collected at
30 about 40% to 50% of the marginal cost while the Planning Board's proposal would put
31 us up at 100%. So in a nutshell, that's what we talked about in terms of School Impact
32 Tax. And now to the juicy conversation which is on Transportation Impact Tax and I
33 have to admit that when we've had this conversation in Committee, we've really had in
34 my mind more of a PHED conversation committee than we've probably had around the
35 tax itself and as you can see in the list of the agenda items that were provided to us
36 again some of the same things I mentioned around the School Impact Tax are also
37 indicated around the Transportation Tax. One of the interesting conversations we had
38 was centered around geographic restrictions on the use of funds. And whether or not
39 that should be eliminated and it seemed like there was a little bit of consensus that
40 perhaps that was a good idea and also clearly another part of the conversation we had
41 was around setting rates by sub areas and limit spending to where the tax is collected.
42 In other words, that was all part really of the same conversation and again something
43 that we probably need to be needful of, especially as we try to isolate those investments
44 that we're going to make around new infrastructure versus existing infrastructure. So I'm
45 just putting those out -- those items out as the way we frame the conversation in
46 Committee and what I would suggest is that a number of the questions that were posed



July 19, 2007

1 to our staff as well as the Planning Board really addressed pretty much what I isolated
2 as things to be focused on and thinking about as we get to any decision making. I think
3 there's general consensus that no matter what gets done with the taxes, they are clearly
4 not going to be adequate to cover a lot of the expenses that we know realistically we
5 would like to address. So that also calls into play that priority setting perhaps needs to
6 be part of the conversation that we have in the autumn as we are setting our Growth
7 Policy here in Montgomery County.

8
9 Council President Praisner,

10 Okay, the only other comment I think somehow got missed on this and maybe is the
11 issue of the Recordation Tax variability and we are in the process of -- or Mr. Faden is
12 in the process of developing a letter to be sent to the Attorney General to -- for me to
13 sign asking for an opinion. It's included within the memo, but not within the list and
14 should be on the list. Councilmember Floreen.

15
16 Councilmember Floreen,

17 Thank you. I just wanted to make a couple of points and ask a couple of questions just
18 generally. I wanted to note that we didn't get into and I visited with the MFP Committee
19 but the issue of whether we'd want to consider exemptions for economic priorities. It's
20 on the list, we just --.

21
22 Council President Praisner,

23 (multiple voices) It's not on the list as a new issue because the issue already is in front
24 of us because the Planning Board -- well unless you have an item beyond the ones that
25 exist now.

26
27 Councilmember Floreen,
28 Right.

29
30 Council President Praisner,

31 Affordable housing is zero for paying any of the Impact Tax. Hospitals are zero, and
32 there is a recommendation from the Planning Board that we should charge for the
33 biotech industry which is -- .

34
35 Councilmember Floreen,

36 I just want to point out that it's not illuminated but it's still certainly in the mix.

37
38 Council President Praisner,
39 Correct.

40
41 Councilmember Floreen,

42 It's just not, whatever, it wasn't a conversation in that Committee that I recall. I had a
43 question, well, I just wanted to say, I've asked Mr. Orlin to put together a list for the
44 Council of what we have been spending our money on in terms of transportation
45 capacity and classroom capacity. And I think it will be helpful as we compare that to
46 what these rates generate now that we've got some numbers. And I just wanted to let



July 19, 2007

1 you all know, it's a work in progress as I understand it. The other thing is, I have a
2 question and it's really not for planning, but actually this chart that we've got in terms of
3 the forecast of Impact Taxes illuminates it to a certain degree. I'd like to, I think it would
4 be helpful for us to know what the Finance Department is assuming in terms of growth
5 both for these sorts of things and also what that means for the operating budget. It's sort
6 of in the sustainability category but I think we forget that new development does provide
7 a revenue to the County and I don't know if that, I think that has been assumed based
8 on their little note here, they say the data from round 7 of the Planning Board forecast
9 for demographics and employment, but I'm not sure how that, what that translates into
10 in terms of assumptions about numbers. And I think it would be helpful for the Council to
11 see that in terms of the overall vision or context of the revenue conversation. The
12 numbers magically seem to go up most years since I've been here in the operating and
13 dealing with the operating and capital budgets. But what some of those assumptions are
14 and those predictions are not always clear. We don't usually get into it.

15
16 Council President Praisner,

17 If I could just stop you. I'm not clear what you're asking so I want to make sure that I
18 understand so if I'm reviewing a list I can sign off on it.

19
20 Councilmember Floreen,

21 It would go to the question of what -- is the Finance Department, Department of
22 Finance's assumption as to household or really household or commercial growth.

23
24 Council President Praisner,

25 Okay. I think they use the information that's provided by the Planning Board.

26
27 Councilmember Floreen,

28 I don't know what that number is. Is it a 1% growth rate in all this?

29
30 Council President Praisner,

31 It's around 7-0 of the Planning Board's forecast.

32
33 Councilmember Floreen,

34 That's what my point is. I'd like to know what --.

35
36 Council President Praisner,

37 You want to relate that to percentage, is that what you are asking?

38
39 Councilmember Floreen,

40 Yeah.

41
42 Council President Praisner,

43 Okay.

44
45 Councilmember Floreen,



July 19, 2007

1 And maybe all it is, is what are those numbers? I thought that might be helpful. And are
2 we going to talk about your sustainability issues? You and Mr. Berliner had.

3
4 Council President Praisner,
5 Well, I had made reference to it earlier and.

6
7 Councilmember Floreen,
8 I just wanted to add that on the sustainability indicators, and I'm not sure that we are
9 really going to get into it at this point.

10
11 Council President Praisner,
12 Not today but I can --.

13
14 Councilmember Floreen,
15 At some point, I would like us to add some element of tracking what we've been doing
16 on the environmental side. If you will recall actually the Chairman wasn't here when I
17 asked for this information some years ago. But Park and Planning provided us with data
18 as to the amount of land preserved and green space. It was a big number about 47% if
19 you include the Ag Reserve and easements, parks and the like. I think that would be a
20 helpful tool to think about tracking in addition to the other things that you have on your
21 list. Because it does go to the quality of life issues.

22
23 Royce Hanson,
24 We would recommend including those.

25
26 Council President Praisner,
27 Let me talk about that for a minute in my --.

28
29 Councilmember Floreen,
30 Okay. We'll get to that. I just wanted to raise that in so far as you are looking to us to
31 identify issues.

32
33 Council President Praisner,
34 Right. Let me just tell you what my expectation is. Planning Board had identified the
35 work on sustainability to be post our action on the Growth Policy. What Councilmember
36 Berliner and I had suggested in our memo of yesterday, not yesterday, Tuesday to
37 Chairman Hanson is that the word sustainability as I have seen, or been stopped in the
38 grocery store et cetera, has raised questions about you're not trying to keep the
39 problems that we have now in place, are you? That's just the way it was phrased to me.
40 I think over the cherries and the plums and I said no, but it is a question of -- what are
41 the issues and the variables and the conditions that one wants to measure and what are
42 the threshold levels of quality that one would want to measure and the, at the same time
43 Councilmember Berliner was talking about the issue of quality of life being something
44 that obviously had surfaced in the past relative to growth policies and then Chair current
45 and also now current Chair Hanson had raised that issue or the Planning Board had
46 raised that issue in the first Growth Policy. I don't have the history from the 70's nor do I



July 19, 2007

1 want to spend any time on that at this point as to why or what was the basis of the
2 Council at that point or what the discussion was. But the quality of life indicators seem,
3 sustaining a high quality of life seem more the way one gets to the nexus of
4 sustainability as a state of condition rather than as a goal in itself. So what Roger and I
5 had talked about is marrying the focus or creating a focus on quality of life indicators
6 and then talking about sustainability in that context. Sustainability from a fiscal
7 perspective, which is where I've used the term most recently related to, do you have the
8 capacity fiscally to maintain whatever it is your goals and priorities are and is the
9 revenue likely to be generated on an on going basis? Environmentally, sustainability is a
10 different term. And that led to I think our continuing at MACO to have this conversation
11 about sustainability seemed to be getting in the way of what we wanted to look at and
12 given conversations we've had before at this table where folks have, bristled is too hard
13 a word, pushed back a little bit from the term sustainability. We thought we might be
14 looking at quality of life indicators didn't seem to have the same kind of reaction. So the
15 memo is here from Councilmember Berliner and I, and I think Nancy, the desire -- since
16 the work will not be completed in September, the point is what are the elements one
17 might want to look at to measure in the on going basis and planning staff has identified
18 and the Planning Board had identified some of these measures. We will proceed with
19 conversation, but from a workload perspective for them, between now and September
20 I'd rather have them focus on the work plan issues.

21
22 Councilmember Floreen,
23 I just wanted to raise -- .

24
25 Council President Praisner,
26 But I'm glad you raised that point as another factor. Councilmember Berliner.

27
28 Councilmember Berliner,
29 I just wanted to thank the Council President for raising it and for her working with me on
30 this. It's something Dr. Hanson and I had an opportunity to talk about in some depth as
31 a function of the work that you started in 1974 with respect to this matter and in which
32 you were not successful and based on our conversations, you've indicated your belief
33 that now other communities are doing this kind of work. You're been involved in doing
34 this kind of work and that the fundamental question that people in my community say to
35 me when they talk about growth in which they've conveyed in writing as well as in
36 conversations, is they're concerned that the growth that is taking place today is coming
37 at the expense of quality of life. And so it seemed to me and to the Council President
38 that we needed to have some means of addressing that issue on those terms.
39 Recognizing of course that quality of life means lots of different things and that there are
40 aspects of our community that are growing and having a quality of life because they are
41 having restaurants there that weren't there before and a new urbanism that is a positive
42 quality of life and on the other hand, there are aspects to the way in which our growth is
43 taking place, our traffic is taking place that degrades quality of life. So it felt like if we
44 were at a point in time when we could pull that together in a way that we could join the
45 conversation about the quality of our life and how we are managing our growth that that



July 19, 2007

would be a net benefit for our community, for you, and for this Council. So that was the genesis.

Council President Praisner,

Okay. Alright. Let me just wrap up again to make sure we're all understanding and on the same wavelength because I would hate to have or create any conflicts that are not necessary from that perspective. George.

Councilmember Leventhal,

I just have one question. As I listened over the last hour and a half, I assume the Planning Board Chairman and his able staff are keeping a running tally of all of the questions that have been asked.

Royce Hanson,

We have and we've tried to answer them as we received them and I think we will come back to you in September with an attempt to distill rather than sort of answer the questions one after each other, I think what we will ask the staff to do and the Board to do is to try to give you a sort of a revised approach that responds to the issues that have been raised, but may say to you that some of these questions can't be answered now. Some ought to go into the work program for continuing effort and tell you what that might entail in either shifting resources or asking for others. And trying to offer something that at least in our judgment may be a way of helping you reach consensus or at least a majority on a number of these issues.

Councilmember Leventhal,

Okay. I appreciate the Chairman's response. I am mindful of the conversation that we enjoyed yesterday in which Councilmembers were encouraged to think about the demands that we as an institution are placing on the Planning Board. And I understand your response to my earlier question. I was sort of hoping, although it sounds like there won't be one, that we might actually have an itemized list of every question that we just asked in the last hour and a half.

Royce Hanson,

Well, you will.

Council President Praisner,

George, it --.

Councilmember Leventhal,

Because it would seem that the amount of staff time involved in running down the various rabbit holes that have been identified here is quite considerable.

Council President Praisner,

And I don't think we are in Wonderland and I really object to discussing it or referring to this as rabbit holes. This is one of the most important actions that a Council takes is related to the Growth Policy. We are past asking questions. We are now at a point



July 19, 2007

1 where the Council is to ask if there are modifications to what has been presented to us
2 that staff might adjust. Some of those modifications are significant, require significant
3 staff work and time, may or may not be able to be done by September, or were never
4 intended to be done in this cycle. Some are items that are just a pushing a button so to
5 speak, I know it's not as simple as that, and making a modest recalculation on certain
6 variables. Most of the major work that I've heard folks ask about relates to the
7 transportation calculation issue. And there have been, I think, a few significant requests
8 for some additional work on that transportation calculation. The list, I think is longer than
9 one would think is associated with significant work. The calculation of the test for Impact
10 Tax in a different area or by different threshold levels, variables on Recordation Tax or
11 calculating for one area at 50% or not, are things that require work, but are not as
12 dramatic an impact as the few items that have been asked for and that staff has known
13 about related to transportation. And so I suspect that those tasks will require work in this
14 time period. We've also asked or will be asking for an Attorney General opinion related
15 to the Recordation Tax. I don't know how long that answer will take, we have to first get
16 it out to them. But at this point, it's not a list of questions, it's a list of work for different
17 scenarios or modifications that as my memo indicated to Councilmembers, I would urge
18 them to come to closure about those modifications they request so staff can respond as
19 to whether it is doable, what kind of workload is involved and then we can collectively
20 prioritize and work through that, whether it is providing additional time, staff time and
21 revenue, or by removing something else in the work plan, but we don't know that yet
22 until they respond.

23
24 Royce Hanson,

25 I would make one request and that is that both the Council and Board will not be
26 meeting during August.

27
28 Council President Praisner,
29 Correct.

30
31 Royce Hanson,

32 And I'd like to have an opportunity for the Board to review things before we bring it back
33 to the Council.

34
35 Council President Praisner,

36 And there is every goal and I believe the Planning Board comes back before the Council
37 does in September. But --.

38
39 Royce Hanson,

40 We like to stay ahead of you.

41
42 Council President Praisner,

43 I know that, and you need to be. But the point is we will work that through in the plan for
44 September. At this point, and that's why trying to be responsive to Vice-President
45 Knapp's request, we've said if anyone has a scenario, a best way to phrase it, they
46 need to get those to me or to Chairman Hanson via our staff so they know about it by



July 19, 2007

- 1 next Tuesday and then if there's more to report or there are implications, we will get
- 2 back to you. Okay. We are in recess until this evening's Public Hearing at 7:30.
- 3